

NO. 16-15172

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CORNELE A. OVERSTREET, Regional Director of the Twenty-
Eighth Region of the National Labor Relations Board, for and on
behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellee,

v .

SHAMROCK FOODS COMPANY,

Respondent-Appellant.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

PETITIONER-APPELLEE NATIONAL LABOR RELATIONS BOARD'S
SUPPLEMENTAL EXCERPTS OF RECORD

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

AMENDMENT TO COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, the Complaint and Notice of Hearing issued on July 21, 2015, is amended to delete the present paragraph 6 and substitute in its place the following paragraph 6; and to amend the second unnumbered paragraph on page 16 as follows:

6. (a) About May 5, 2015, Respondent disciplined its employee Mario Lerma (Lerma).

(b) Respondent engaged in the conduct described above in paragraph 5(p), because Wallace assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) Respondent engaged in the conduct described above in paragraph 6(a), because Lerma assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The second unnumbered paragraph on page 16 is amended to insert after the words "paragraphs 5(p)" the words "5(q) and 6(b)."

The remainder of the Complaint and Notice of Hearing is unchanged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amendment to the complaint. The answer must be **received by this office on or before August 27, 2015, or postmarked on or before August 26, 2015.** Respondent should file the original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to an amendment to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may

not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the amendment to the complaint are true.

Dated at Phoenix, Arizona, this 13th day of August, 2015.

/s/Cornele A. Overstreet
Cornele A. Overstreet, Regional Director

Attachments

Form NLRB-4668
(6-2014)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

**BAKERY, CONFECTIONERY, TOBACCO
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INTERNATIONAL UNION, LOCAL
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Case 28-CA-150157

AFFIDAVIT OF SERVICE OF: AMENDMENT TO COMPLAINT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 13, 2015, I served the above-entitled document(s) by certified mail, as noted below, upon the following persons, addressed to them at the following addresses:

Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791
7014 2120 0004 7704 3837

Jay Krupin, Attorney at Law
Baker & Hostetler LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036

Nancy Inesta, Attorney at Law
Baker & Hostetler LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

Bakery, Confectionery, Tobacco Workers'
and Grain Millers International Union, Local
Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, AZ 85016-7679

David A. Rosenfeld, Attorney at Law
Weinberg Roger and Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

August 13, 2015

Date

Kay Davis, Designated Agent of NLRB

Name

/s/Kay Davis

Signature

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FORM NLRB-5168
(2-08)

Case 28-CA-150157
Steven Phipps affidavit

Shamrock Foods and Shamrock Farms Dairy Division

Confidential Witness Affidavit

I, Steven Phipps, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 4065 E. Blue Ridge Place, Chandler, AZ 85249.

My mobile number is 602-577-7608.

My e-mail address is, sshipps51@gmail.com

I am employed by Shamrock Foods Company, the correct name of the Employer, which is located at 2228 N. Black Canyon Highway, Phoenix, AZ 85009, telephone number 602-272-6721. I work at the warehouse distribution center location of 2450 N. 29th Avenue, Phoenix, AZ 85009. The employer is engaged in the business of distribution of food and dairy products. The employer is a nationwide company with several locations in Arizona, with other locations in New Mexico, Southern California, Denver, Colorado, Oregon, Virginia, and Texas.

1 I was hired by the employer on 9/29/1996 as a general warehouse loader. My current position is
2 forklift driver, which is still called a general warehouse employee. My duties include restocking pick-
3 slots, putting away pallets of delivered products, and any other duties as assigned. I work 40 hours a
4 week, working Sunday through Wednesdays, and then on Fridays. I work first shift for forklift
5 employees, from 6:00 a.m. until 2:30 p.m. My pay rate is \$12.00 per hour base rate plus incentives of
6 \$2.00 per hour more for forklift driving; \$1.50 per hour for perfect safety and attendance, and monies
7 based on number of tasks performed each hour, which I replenish and/or put away pallets at a rate of

PRIVACY ACT STATEMENT

Page 1 of 53  Initials

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

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1 about 25 per hour. So my pay ranges from about \$24.50 per hour to \$26.00. I am eligible for overtime
2 and the employer offers it currently; I choose not to take it. My immediate supervisor is Johnny Banda,
3 whose title is supervisor, or Richard Gomez, whose title is supervisor, depending upon the day of the
4 week. Often Gomez and Banda are there at the same time. They report to Brian (Ernie) Nicklen, whose
5 title I do not know since the employer combined the Inbound and Shipping departments. His supervisor
6 is Ivan Vaivao, whose title is the Warehouse Operations Manager. His supervisor is Jerry Kropman,
7 whose title is the Plant Manager. His supervisor is Randy McClanahan, whose title is Regional
8 Manager. His supervisor is Mark Engdahl, whose title is the Vice-President of Operation Foods Service.
9 James Allen, whose title I do not know, is part of Human Resources. Allen reports to Natalie Wright,
10 who is the Manager of Human Resources. She reports to another manager whose name I do not know.
11 Pimenthal and this other manager report to Bob Beake, who is the Vice-President of Human Resources.
12 Also Cindy Pimenthal, is the Manager of Benefits. Kent and Norm McClelland are the owners. I do not
13 have any employees that I supervise or responsibly direct. The employer has a progressive discipline
14 policy and assesses points against employees for certain violations of its policies. The employer issues a
15 verbal warning, a written warning, a final written warning, and then discharges employees. Points drop
16 off after two years of no further violations. If an employee is assessed eight points in a two year period
17 the employer fires its employees. I had a verbal written discipline issued to me, and have a point
18 assessed against me, for dropping a pallet around January 2015, which meant I was no longer eligible
19 for the safety bonus the employer paid employees, about \$300. I had a written discipline also issued to
20 me around the beginning of April 2015, and two points assessed against me, for having had a forklift
21 accident where I ran a forklift into a poll.

22 With regard to the employer's policies, the employer has a confidentiality rule that employees
23 are not permitted to talk about their wages. For example, when I was on the shipping crew two to three

1 years ago the employer came up with a new incentive plan. There was a meeting held with management
2 and the shipping crew held in auditorium three, the closest auditorium to the warehouse. Present for the
3 employer were Engdahl, and Jerry Kropman. Present for the employees were myself, Brian Martin
4 (forklift driver), Gilbert Jaquez (forklift driver), Alfonso ?? (forklift driver), Kia Hamilton (forklift
5 driver), Derek Hall (forklift driver), Tom Richardson (forklift driver), and others whose names I cannot
6 recall. There were probably 10-12 employees in the room. Jerry told us about the new incentive plan the
7 employer was considering for the Shipping crew and asked us not to discuss the plan with anyone else
8 outside the room because they were working a new pay plan for the Inbound crew. This rule has not
9 been rescinded. I have not heard of anyone being disciplined for violating this rule. I do not know if the
10 employer has a rule in its handbook that employees cannot discuss with other employees how much they
11 are paid, but ever since I have worked for the Employer there is a common knowledge among all
12 employees that the employer does not allow us to talk about what we are paid with other employees.
13 For example, I have been told by my supervisor at the time, Mr. Louellen, sometime in 1998, that I was
14 not permitted to pass round my pay sheet, (which shows my base pay rate, time in service pay rate,
15 production tasks/per hour, incentive bonuses I qualified for that week, and average hourly pay, average
16 overtime pay and average hourly total for the week. Loaders' pay sheets also show damages and shorts.
17 Pickers pay sheets also show their mis-picks and shorts) to other employees. He told me my pay sheet
18 was confidential and not to be shown to other employees. I do know that years ago, about 17.5 years
19 ago, a loader who worked in the Denver, CO warehouse, sent his pay sheet to a loader in Phoenix and
20 that Phoenix loader showed the pay sheet to other employees in the warehouse and management came
21 and physically took away the pay sheet. I do not know the name of this Phoenix employee. I know about
22 this incident because I saw this employee going around showing the pay sheet to others. He did not
23 show it to me. Other employees told me about seeing it though and about management taking the pay

sheet away from the Phoenix employee, but I cannot recall these employees' names either. The handbook also has a confidentiality policy in it and I was required to sign it. I also recall the employer requiring me to sign a confidentiality agreement as part of acknowledging I read the handbook. The confidentiality rule in the Employee handbook states on pages 8, 9, and 11 the following:

Protecting the Company's Confidential Information

The Company's confidential information is a valuable asset and includes: information, knowledge, or data concerning costs, commission reports or payments, purchasing, profits, markets, sales, discounts, margins, customer histories or preferences, relationships with vendors, organization structures, associates, customers, surveys, customer lists, lists of prospective customers, customer account records, marketing plans or efforts, sales records, training and service materials, Company manuals and policies, computer programs, software and disks, order guides, financial statements and projections, business plans, budgets, supplier lists, contracts, calendars and/or day-timers that contain customer contact and other customer information, compensation schedules, proposals and quotes for business, notes regarding customers and prospective customers and pricing information.

This information is the property of the Company and may be protected by patent, trademark, copyright and trade secret laws. All confidential information must be used for Company business purposes only. Every associate, agent and contractor must safeguard it. **THIS RESPONSIBILITY INCLUDES NOT DISCLOSING THE COMPANY CONFIDENTIAL INFORMATION, INCLUDING INFORMATION REGARDING THE COMPANY'S PRODUCTS OR BUSINESS, OVER THE INTERNET, INCLUDING THROUGH SOCIAL MEDIA.** This responsibility includes the safeguarding, securing and proper disposal of confidential information in accordance with the Company's Record Management Policy. This obligation extends to confidential information of third parties that the Company has rightfully received under Non-Disclosure Agreements. You are also responsible for properly labeling any and all documentation shared with or correspondence sent to the Company's attorneys as "Attorney-Client Privileged"

(i) Non-Disclosure/Assignment Agreement. When you joined the Company, you signed an agreement to protect and hold confidential the Company's proprietary information. This agreement remains in effect for as long as you work for the Company and after you leave the Company. Under this agreement, you may not disclose the Company's confidential information to anyone or use it to benefit anyone other than the Company without the prior written consent of an authorized Company officer.

(ii) Disclosure of Company Confidential Information. To further the Company's business, from time to time our confidential information may be disclosed to potential business partners. However, such disclosure should never be done without carefully considering its potential benefits and risks. If you determine in consultation with your manager and other appropriate Company management that disclosure of confidential information is necessary, you must then contact the Human Resources Department to ensure that an appropriate written non-disclosure agreement is signed prior to the disclosure. The Company has standard non-disclosure agreements suitable for most disclosures. You must not sign a third party's non-disclosure agreement or accept changes to the Company's standard non-disclosure agreements without review and approval by the Company's Human Resources Department

1
2 **(v) Personally Identifiable Information.** Special rules dictated by law apply when dealing with
3 personally identifiable information (i.e. information about an individual that normally would be
4 confidential and that contains data from which the identity of the individual could be determined;
5 examples include, but are not limited to, health care records and financial records.) Depending upon
6 the type of personally identifiable information at issue, laws require that records be kept
7 documenting: each person who viewed, accessed or obtained knowledge of the information; each
8 copy made of the information; each use of the information; and evidence of the proper destruction
9 of each copy of the information. Our Company policy is not to accept such information from a third
10 party unless absolutely necessary and not until after all controls have been put into place to isolate
11 and protect such information while it is in our Company's hands. Before entering into a business
12 transaction that will require the Company to accept such information, it is the responsibility of the
13 business team, working with groups that include HR, Operations, and IS to insure that all necessary
14 controls are in place to allow the Company to perform its obligations under both the contract and the
15 law. In the event you become aware of, or suspect that an unauthorized disclosure or loss of
16 personally identifiable information has occurred, you are required to report this event. Reports may
17 be made, without fear of reprisal, threats, retribution or retaliation, to your Human Resources
18 Department.

19
20 Separate from the handbook, sometime in 2012 or 2013, the employer held a meeting with all
21 employees where the employer required all employees to sign a policy regarding employees agreeing
22 not to post anything on Facebook, Twitter or any other social media that disparaged or talked bad about
23 the employer. I missed the meeting, so after the meeting, a supervisor, Bud Shaley, came to me as I
24 came off of break. We were standing near the south end, by the table next to the receiving office. No
25 one else was present but several employees passed us as we stood there. Shaley told me there was this
26 meeting held by the employer and all employees had to sign this agreement not to post stuff on social
27 media. I told him I didn't want to sign this policy. I told him I didn't think it was fair, as what I did in
28 my off time was my business, not theirs. He said everyone had to sign it and if I didn't sign it I would
29 be fired. I don't recall the exact wording of the policy, but I signed this one page policy so that I
30 wouldn't lose my job. Human Resources has told us employees that everything we sign is kept in our
31 personnel file. The rumor at that time was that someone had gone on Facebook and disparaged the

company and that was the reason why the employer had us sign this no posting on social media agreement.

With regard to the employer's no solicitation/no distribution policy, which states on page 65 of the Employee handbook the following:

No Solicitation, No Distribution

Shamrock believes that the work time of our associates should be devoted to their work-related activities, and that it is neither safe nor productive for our associates to be distracted by individuals engaged in non-work related activities during work time or in work areas. Thus, the conducting of non-company business related activities is prohibited during the working time by either the associate doing the soliciting or the associate being solicited or at any time in customer or public areas. Associates may not solicit other associates under any circumstances for any non-company related activities.

The distribution of non-company literature, such as leaflets, letters or other written materials by an associate is not permitted during the working time of either the associate doing the distributing or the associate to whom the non-company literature is being distributed, or any time in working areas or in customer and public areas.

It is important that we keep our associates informed on all matters that involve them. Company bulletin boards/email is our primary means for posting notices and other materials related to our associates and our business. In order to avoid any confusion over what may or may not be posted on Shamrock bulletin boards, and to avoid obscuring important business-related materials with items which are of a personal nature, Shamrock bulletin boards are to be used solely for the posting of Shamrock business-related notices and materials. If you would like to post any Shamrock business-related materials, please see your Department Manager, the General/Branch Manager or the Human Resources Representative. Only these individuals are authorized to approve and post information on Shamrock bulletin boards.

Yet, the employer currently allows distribution and solicitation in the work area during work time. For example, the employer sponsored a betting pool for the 2015 Superbowl. The pool was posted on the employer's bulletin board with the grid of names of employees and numbers of who bought what block. Dwayne Thomas, whose title is supervisor third shift, ran this betting pool. I cannot recall the exact date, but a week or so before the Superbowl, Thomas came up to me, during my work time my work area, to ask me if I wanted to get into the pool for \$20. I said yes, and gave him \$20, picked my numbers and then saw him then go ask other employees on the floor if they wanted in the pool. Thomas also ran the 2014 Superbowl betting pool, and came around to my work area during work time to get my bet, then went to work areas of other employees and asked them to join the pool. I won \$500 in that pool. Also the employer itself will post on the Employer bulletin board an announcement regarding an upcoming Employee barbeque for all employees to attend. The event is held for the express purpose of getting donations from employees to raise money for the Employee Relief Fund. This fund is a fund

1 available to all employees for emergencies. Employees have the option of also donating to this fund via
2 paycheck deduction. The employer also sells expired candy to its employees at the will-call desk which
3 funds also go toward the Employee Emergency Fund. I have purchased candy there during working
4 time. I cannot recall the exact dates but I made a purchase of candy at will-call a few weeks ago, and
5 also a couple of months ago. I can also tell you that in the past employees have solicited other
6 employees for tamale pre-orders, as their wives make tamales to sell and the employees of these wives
7 bring the tamale orders into work, in the work area during working time and deliver the orders. The
8 Floor Captains are aware of the tamale sales and allowed it to happen as they would see us exchange
9 monies for tamales. These sales occurred some years ago and I cannot recall seeing any tamale sales
10 recently. The employer also allows for employees to solicit for donations, to help employees involved
11 in accidents or are in the hospital. Employees go around the warehouse during work time in work areas
12 to collect the monies. I know of employee Karen Noble who collected monies like that to help
13 employees who ended up in the hospital or had death in the family. I cannot recall her doing this for two
14 or three years.

15 With regard to Floor Captains as supervisors, Floor Captains have authority to recommend
16 discipline, but not issue discipline. They facilitate the work by solving problems, helping pickers pick if
17 an item is missing out of the batch order. Floor captains have authority to assign work to us employees,
18 for example, they could order me to stop operating the fork lift and go to the loading area to load a truck.
19 They do not have to check with anyone in higher authority to make that decision. They would be held
20 responsible though if something went wrong with what they ordered me to do. They make independent
21 decisions as to an employee's level of skill to make such assignments. Floor Captains are considered to
22 be foremen. I have gone to a Floor Captain Trevor Holt, and told him I was feeling unwell and told
23 Floor Captain Larry ??? that I had an emergency at home and had to leave work and he told me to go

1 ahead and leave and he will let the supervisor know. Floor Captains also tell employees to stay late, for
 2 example they consider the work load and if there is a shift change coming up and the work on the
 3 current shift isn't completed (we have a certain number trucks to load and orders to fill for certain
 4 routes) the Floor Captain has the authority to assign the day crew shift to stay beyond work hours to get
 5 the job done, otherwise the amount of work to be done will overwhelm the night crew. I am not aware of
 6 them having to check with anyone in higher authority to make that decision. Floor Captains can tell us
 7 employees to go do something and if we refuse, they do not have the authority to discipline us. They
 8 have to go get a supervisor to deal with the situation. I do not know of a situation, nor have I heard or
 9 seen that Floor Captains can effectively recommend discipline be issued to an employee for refusing to
 10 do what the Floor Captain told the employee to do.

11 With regard to the rule in the Employee Handbook regarding blogging, on pages 61-62,

12
 13 *Bloqqinq*

14 Shamrock recognizes that blogs, other types of self-published online journals, and collaborative Web-
 15 based discussion forums can be effective tools for sharing ideas and exchanging information of all kinds.
 16 Shamrock is concerned with ensuring that use of such communications serves Shamrock's need to
 17 maintain Shamrock's brand identity, integrity, and reputation while minimizing actual or potential legal
 18 risks.

19 The following rules and guidelines apply to blogging, whether blogging is done for Shamrock on
 20 company time, on a personal Web site during non-work time, or outside the workplace. The rules and
 21 guidelines apply to all associates.

- 22 • Shamrock discourages associates from discussing publicly any work-related matters, whether
 23 confidential or not, outside company-authorized communications. Nonofficial company
 24 communications include Internet chat rooms, associates personal blogs and similar forms of
 25 online journals or diaries, personal newsletters on the Internet, and blogs on Web sites not
 26 affiliated with, sponsored, or maintained by Shamrock.
- 27 • Associates have a duty to protect associates' home addresses, social security numbers, birth
 28 date, driver's license number, and other personal information and the confidentiality of
 29 Shamrock trade secrets, marketing lists, customer account information, strategic business plans,
 30 competitor intelligence, financial information, business contracts, and other proprietary and
 31 nonpublic company information that associates can access.
- 32 • Associates cannot use blogs to harass, threaten, libel or slander, malign, defame or disparage,
 33 or discriminate against co-workers, managers, customers, clients, vendors or suppliers, any
 34 organizations associated or doing business with Shamrock, or any members of the public,
 35 including Web site visitors who post comments about blog contents.

- Associates cannot use Shamrock's logo or trademarks or the name, logo, or trademarks of any business partner, supplier, vendor, affiliate, or subsidiary on any personal blogs or other online sites unless their use is sponsored or otherwise sanctioned, approved, or maintained by Shamrock.
- Associates cannot post on personal blogs Shamrock's copyrighted information or company-issued documents bearing Shamrock's name, trademark, or logo.
- Associates cannot post on personal blogs photographs of company events, other associates or company representatives engaged in Shamrock's business, or company products, unless associates have received Shamrock's explicit permission.
- Associates cannot advertise or sell company products or services via personal blogs.
- Shamrock discourages associates from linking to Shamrock's external or internal Web site from personal blogs.

Shamrock will not construe this policy nor apply it in a manner that interferes with associates' rights under Section 7 of the NLRA.

Guideline to Prohibited Activities

The following behaviors are examples of previously stated or additional actions to activities that are prohibited and considered improper use of the Internet, E-mail or voicemail systems provided by Shamrock. These examples are provided as guidelines only and are not all-inclusive:

- Sending or posting discriminatory, harassing, or threatening messages or images a Sending or receiving of non-Shamrock instant messages
- Using the organization's time and resources for personal gain
- Stealing, using, or disclosing someone else's code or password without authorization
- Copying, pirating, or downloading software and electronic files without permission
- Sending or posting confidential material, trade secrets, or proprietary information outside of the organization
- Violating copyright law
- Failing to observe licensing agreements
- Engaging in unauthorized transactions that may incur a cost to the organization or initiate unwanted Internet services and transmissions
- Participating in the viewing or exchange of pornography or obscene materials
- Sending or posting messages that defame or slander other individuals
- Attempting to break into the computer system of another organization or person
- Refusing to cooperate with security investigations
- Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities
- Jeopardizing the security of the organization's electronic communications systems
- Sending or posting messages that disparage another organization

Shamrock will not construe this policy nor apply it in a manner that interferes with associates' rights under Section 7 of the NLRA.

Reporting Violations

As a condition of employment and continued employment, associates are required to sign an Electronic and Telephonic Communications Acknowledgment Form. Applicants are required to sign this form on acceptance of an employment offer by Shamrock.

Guidelines to Appropriate Conduct

As an integral member of Shamrock, the associate is expected to accept certain responsibilities, adhere to acceptable business principles in matters of personal conduct, and exhibit a high degree of personal integrity at all times. This involves sincere respect for the rights and feelings of others and refraining from behavior that might be viewed unfavorably by current or potential customers or by the public at large.

Whether the associate is on or off duty, the associate's conduct reflects on Shamrock. The associate is, consequently, encouraged to observe the highest standards of professionalism at all times.

Listed below are some of the rules and regulations of Shamrock. This list should not be viewed as all-inclusive. It is intended only to illustrate the types of behavior and conduct that Shamrock considers inappropriate and grounds for disciplinary action up to and including termination of employment without prior warning, at the sole discretion of the company, including, but not limited to, the following:

- Falsification, forgery or dishonesty in any aspect of employment, including but not limited to falsification of personnel records, time cards, reports, investigations, work methods/practices and using another associate's time cards or passwords/login.
- Theft and/or deliberate damage or destruction of property not belonging to the associate, including the misuse or unauthorized use of any products, property, tools, equipment of any person or the unauthorized use of any company-owned equipment
- Failure to observe all safety practices/policies and to perform the job in the safest and most efficient manner, including wearing prescribed personal safety equipment, reporting all accidents/incidents in a timely manner and complying with all safety rules and regulations
- Failure to adhere to all Departmental rules/practices/procedures, including the failure to work productively for the time period assigned and according to the rules, instructions and work given by supervisors/managers, failing to stay in your work area; failing to work the required time, leaving the work area and or the property without authorization and notification or entering work areas that are unauthorized.
- Violation of any of the work rules or Policies outlined in this Handbook, including but not limited to the appropriate dress policy, anti-workplace violence/ weapons, no smoking, no drugs/alcohol, call-in procedures required by the Department, no-solicitation or distribution or unauthorized access Policies

Any act that interferes with another associate's right to be free from harassment or prevents an associate's enjoyment of work, including sexual or any other harassment, wasting the associate's time, harming or placing the associate in harm's way, immoral or indecent conduct or conduct that creates a disturbance in the workplace

Shamrock will not construe this policy nor apply it in a manner that interferes with associates' rights under Section 7 of the National Labor Relations Act.

Discipline for Violations

Associates who violate this policy are subject to disciplinary action, up to and including termination.

1 Additionally, Shamrock investigates and responds to all reports of violations of Shamrock's
2 blogging rules and guidelines or related company policies or rules. Shamrock reserves the right to
3 discharge, discipline associates or take other appropriate action, including legal action against associates
4 who engage in prohibited or unlawful conduct.
5

6 I do not know any employee who blogs or who have been disciplined for violating the
7 employer's blogging policy.

8 With regard to the organizing campaign with Bakery, Confectionery, Tobacco Workers and
9 Grain Millers International Union, AFL-CIO (Union), as background, I have been with the employer for
10 18 years and was employed in 1998 when the Teamsters, Local 104, tried unsuccessfully to organize the
11 drivers and warehouse employees. Back then Vincent D'Anella and Luigi Barriga were the warehouse
12 employees who instigated that campaign and both of them were discharged by the employer. About
13 nine years ago I stood up during a town hall meeting, conducted by Bob Beake, Matt Miller, the
14 Operations Manager of the Warehouse at that time, and Mark Engdahl. About 200 employees were in
15 attendance. I asked the employer what they were going to do to keep the union out of the company. I
16 told them they treated us like red-headed step-children, and didn't give a rat's ass about us so long as the
17 trucks rolled out of there. Miller told us he didn't want us to feel that way, Engdahl grabbed the
18 microphone away and said basically that they cared about us and didn't want us to feel that way. Then
19 Beake grabbed the microphone and said he cared and didn't want us to feel that way and was at a loss
20 for words. Beake said they would look into my complaints. As I left the meeting Mitch Lawrie, a new
21 Manager in Business Process Improvement (BPI) department, who reported directly to Kent
22 McClelland, told me that what I had to say in the town hall meeting was interesting and gave me his
23 card and asked me to stay in contact with him. I didn't know who he was so I did not contact him.

24 Then after that the employer enrolled me in a program called Team Owned Process Performance
25 (TOPP), which was meant to be a joint employee and manager committee to resolve employee issues. I
26 was considered a facilitator and was pulled off my forklift tasks and permitted to answer management e-

1 mails to the company and discuss with management how to fix employee issues. But when Jerry
2 Kropman came in he killed the program and phased me out of it.

3 Then around May 2014, a more exact date I cannot recall, the employer gave us three-days
4 notice that the employer was combining day shipping and night shipping into one schedule, which meant
5 employees had to scramble to find child-care as it changed everyone's schedule. Those that went into
6 management to complain about their schedule were told they had to accept it or get fired. I also
7 complained about the schedule as I went from working days, 9:00 to 6:00 p.m. to working 3:00 or 4:00
8 p.m. until 1:00 a.m. or 2:00 a.m. in the morning. I complained to Vaivao, to Kropman, and Armando
9 Gutierrez who was my immediate manager at the time and Anthony Uris, my immediate supervisor at
10 the time, about them changing my schedule and all of our schedules. Vaivao said this was what the
11 employer was doing. Because of all our complaints, the first Sunday we all worked as a crew under the
12 new schedule, around 5/25/14 or 6/1/14, the employer had a meeting with all the employees before shift
13 started, in the upstairs break room. Present for the employer were Kropman and Vaivao. Present for the
14 employees were myself, Gustoavo Loustaunu, Tom Richardson, Art Manning (Floor Captain), Kia
15 Hamilton, Derek Hall, Mario Lerma, Gilbert Jaquez, and others whose names I cannot recall, for a total
16 of about 100 employees. Kropman told us that he would be taking away an eight week average of pay
17 (the average paid no matter what job I performed; i.e. forklift driver, loader, picker which all paid
18 different), and replace that with indirect time (non-productive time, but doing some task in order to be
19 paid, for example setting up a truck for loading, pulling all the boards out of the aisles at night, sweeping
20 floors, etc.), which he would decide when that was needed. He told us he would be moving us all
21 around on different jobs and we would have to do that assigned job no matter what it was or what it
22 paid. Then he told us that there were 35 employees who had been laid off, that wanted to come back to
23 work, and that if we didn't do our job, or not show up, or not produce, we would be fired. Vaivao told

us about the 35 employees that got laid off and how he had found jobs inside the company, low-paying, for ten of those guys and there were still 25 employees laid off and that wanted to come back to work. He said if we didn't do our job and we didn't produce, they would fire us and hire those guys. Tom Richardson was then taken off the forklift where he was making \$26 per hour and assigned a job that paid \$14 an hour, with a less senior employee taking over Tom's forklift job. That same type of scenario also happened to another employee Jaime Frias. Both of these employees told me around the end of June 2014, that they had separately and at different times gone to Jeff Vanderwalker, the night shipping manager, and complained about their job assignments and the fact a less senior guy was on the forklift and that they were making less money. Both of these employees told me they asked Vanderwalker if they could go back to an eight week average for pay for the lower paying job. Vanderwalker told them no and told them if they didn't like the job assignment and didn't do the job assignment, he had 25 guys he could call into do the job and he would fire them on the spot. They both went back and did the jobs assigned. I was not pulled off my forklift.

Then around the middle of August 2014, most employees were put back in their regular schedules. I spoke with Art Manning, a Floor Captain, regarding why management had taken away our DSI bonus one week, DSI being a an incentive payment to employees based on the measurement of customer satisfaction. We found out that we didn't get our DSI bonus that week because management had moved the 750 trays for schools to an outside trailer to make more room in the warehouse and based on that move purchasing, failed to order food trays for schools based on seeing 750 trays still in the computer system. The effect was 750 trays did not get shipped to schools, the customers were not satisfied, and we employees paid the price when the employer took away our DSI bonus for the week. My DSI bonus amounted in the past to \$2.00 per hour more; so I lost about \$80-\$100 dollars. The DSI bonus was different for each employee and the school tray incident affected employees other than

1 myself. I also spoke to Manning about the indirect pay being taken away from the loaders for a week
2 around August 2014. (Those employees were so upset about it they walked out of their trucks to find
3 out what was going on. The next day Vaivao held a meeting with all the loaders. Brian Martin attended
4 this meeting and after the meeting he told me that Vaivao told the employees that if they walked out of
5 their trucks again, they would be fired as that would be job abandonment. Within about three days later,
6 again this is sometime in August 2014, a more exact date I cannot recall, Natalie Wright, the HR
7 Manager, walked through my work area and asked my how it was going. I said we had some problems
8 on the floor. She said oh, and I stopped my forklift and got out and talked with her. I told her generally,
9 that the mood in the warehouse was angry and that management needed to do something to calm it
10 down. She asked me why and I told her about the school tray incident, the DSI incident and the fact the
11 indirect was taken away and they walked out of their trucks and that Vaivao the next day threatened to
12 fire them all if they did that again. I told her about the meeting management had with employees in May
13 2014, where employees were threatened with being fired if they didn't accept the new schedule change.
14 She told me that Indirect time (non-productive time of waiting around for loading or unloading) pay had
15 not been taken away from employees and had been corrected. She told me that Vaivao and Kropman
16 should not threatened employees with discharge. She then told me that the loaders could be fired
17 because they all (nine or ten employees) walked off the job and that was job abandonment. She told me
18 she would check into my complaints and see what could be done to resolve them. I never heard back
19 from her about these issues.) Manning told me to make an appointment with Engdahl to discuss my
20 complaints. I made an appointment and on 9/12/14, my day off, I met with Engdahl in his office. No
21 one else was present. I had prepared a chronology of events of what had happened in the warehouse, as
22 related to me by other employees and what I had experienced. I showed him this chronology of events
23 and discussed each one with him and the perception on the floor and what the employees were thinking

1 and feeling and told him that something needed to be done to fix this by management and that Art
2 Manning told me he was the one who could do something. I also told Engdahl that if management
3 didn't do something to fix these issues that he was going to end up with a union in the warehouse. He
4 told me he didn't believe in unions and he didn't think there was a need for a union at Shamrock because
5 management and employees could work things out. He told me he had been part of a union and been on
6 both sides, as a manager and a member of the union. He said he appreciated me coming in and as Vice
7 President it was his job to fix problems. He said he took my complaints seriously and would look into it,
8 but that he just needed some time. This meeting lasted about 45 minutes. We both took notes during
9 this meeting.

10 Then on 9/15/14, the following Monday, Jerry Kropman called me into his office. Anthony Uris
11 had gone to Kropman to tell him that I had questions about the dry racking in the warehouse. Kropman
12 told Uris to get me up there. Uris came and got me and we went back to Kropman's office. Uris,
13 Kropman and I discussed the dry rack issues and told me why the employer was doing it, then dismissed
14 Uris asking me to stay. Then Kropman talked to me for two hours. No one else was present. He told
15 me he understood that I was upset. He said so talk to me. He said he wanted to work this out or
16 something to that effect. We discussed the same issues I had discussed with Engdahl, about the DSI
17 being taken away and how the employees were upset that they didn't get paid. He said that was the way
18 the DSI was structured. I told him the employees wanted to know what management was going to do
19 make sure that didn't happen again. He said it was a good question and they were going to look at
20 having things in place. We continued to discuss other issues employees were unhappy with, such as the
21 indirect and employees walking off work. He said he didn't direct anyone to withhold the indirect from
22 the loaders, and they have since been paid for it. Then we discussed management's style and philosophy
23 and I said that management didn't seem to know how to manage or deal with employees. I told him

1 management doesn't talk to us, engage with us, or come out of their offices and walk the floor. The
2 meeting ended cordially, with Engdahl saying he would look into it and to give him some time.

3 Then around the end of September 2014, a more exact date I cannot recall. I was complaining to
4 employee Jaime Frias in the employee locker room about how I was tired of waiting for the employer to
5 fix things in the workplace. Frias said we needed a union in here. I told him I didn't believe in unions
6 but that I didn't see any other way as I had tried everything else. He told me I needed to talk to Gilbert
7 Jaquez. I went and talked to Gilbert a day or two later and he told me he was trying to get a union in the
8 warehouse. He told me he was in the process of forming a union committee. He told me he was trying
9 to get other employees involved but they didn't want to go to the union hall. I said I still didn't believe
10 in unions but I didn't see that management was giving us employees any choice in trying to improve
11 things around here. Gilbert then invited me to come down to the Teamster's hall and talk to the union
12 representative. I said okay that my day off was Friday and Saturday and I would come to the union hall
13 on Friday to talk to the union representative. I told him to just set him up and let me know. He said okay.
14 The meeting never happened.

15 Then the second week of October 2014, I was complaining about what was happening at work
16 with my neighbor, who told me I needed to talk his Father-in-law, Dennis, who happened to be a
17 business manager for the Union. Then around 11/1/14, the date I am uncertain of, I was at my
18 neighbor's house with Dennis, having breakfast. Dennis talked to me about what a union could do for
19 the employees, about the terms that go into a collective bargaining agreement. He then told me I needed
20 to talk to John Price, the International organizer for the union. Dennis got on his cell phone and dialed
21 Price and put him on speakerphone. Price told me he would have one of his best organizers contact me,
22 Eric Anderson, and then we exchanged contact information. Price told me Anderson would contact me
23 on Monday, 11/3/14.

1 Then on 11/3/14, Anderson called me at 9:00 a.m. and introduced himself. We set up a meeting
2 for 11/22/14, at the union hall located on 16th and Thomas Street in Phoenix. On 11/22/14, myself and
3 my wife went to the union hall and met with union representatives Anderson, Mike Wizner and Robert
4 Kingsby. No one else was present. I signed an authorization for representation card and Anderson laid
5 out a plan at the meeting for organizing the employees in the warehouse. We are not organizing the
6 drivers. I was not given cards to pass out. We did set up a schedule for having one-on-one meetings with
7 employees to get an organizing committee formed. We discussed keeping our campaign covert and to
8 get cards signed outside of work and at the union hall. Our first scheduled meeting was planned for
9 12/11/14 at the union hall. On 12/11/14, I met with Anderson, Mike Wizner and an employee whose
10 name I have provided to the Board Agent. This employee signed a union card and agreed to be on the
11 organizing committee. I can authenticate the employee's signature on the card. After that, at work,
12 between shifts, in the break room and parking lot I would talk to warehouse employees about getting the
13 union in, but I was careful to do it covertly and was careful who I talked to in order to keep my activity
14 covert.

15 The next meeting to organize employees was held on 12/12/14 at the union hall with myself,
16 union representatives Anderson, and Wizner present, along with some employees whose names I have
17 provided to the Board Agent. We discussed getting a union in at work with these employees and what
18 it meant to be on the organizing committee. All these employees signed an authorization card and I can
19 authenticate their cards. Some of these employees also agreed to be on the organizing committee.

20 Then the next one-on-one meeting to organize employees was held on 12/13/14, at the union
21 hall, I met with, Anderson, Wizner and an employee whose name I have provided to the Board Agent.
22 This employee signed a card and I can authenticate the employee's signature on the card.

1 Then the next one-on-one meeting to organize employees was held on 12/30/14, at the union
2 hall. I was present with Anderson, Wizner and met with some employees whose names I have provided
3 to the Board Agent. Some of these employees signed authorization cards and I can authenticate it is their
4 signatures on the cards.

5 Around the end of December 2014, or the first of January 2015, drivers who did hauls to
6 California started coming back to the terminal and telling us warehouse employees that the Teamsters
7 were organizing the drivers in California. Word spread like wildfire about the organizing campaign in
8 the warehouse and the employees were all talking about it away from the supervisors.

9 Then the next meeting to organize employees was held on 1/2/15, at the union hall, I met with
10 Anderson, Wizner, and some employees. All the employees including myself signed in for this meeting.
11 Some of these employees signed cards but I cannot authenticate these cards. We discussed with all
12 present getting a union in at work and about getting the cards signed in order to get to a representation
13 election. We gave some of these employees cards to pass out with the same instructions we told the
14 other organizers, to see employees sign the cards and have the cards handed back and to get cards signed
15 off-site, off work time.

16 Then the next meeting to organize employees was held on 1/5/15, at the union hall, I met with
17 Anderson, Wizner and an employee whose name I have provided to the Board Agent. We discussed
18 with him getting a union in at work. This employee signed an authorization card, and I saw this
19 employee sign the card so I can authenticate it is the employee's signature on the card.

20 Then the next meeting to organize employees was held on 1/6/15, at the union hall. I met with
21 Anderson, Wizner and an employee whose name I have provided to the Board Agent. This employee
22 signed a card and I can authenticate the employee's signature on the card.

1 Around 1/14/15, supervisor Tyler Armstrong, whose title is Business Process Improvement
2 (BPI) manager, text me and asked if he could meet with me outside of work, or give me a call.
3 Armstrong then caught up with me in aisle 75 and told me that several employees had been coming up
4 to him to complain about the change in the forklift schedule (going from two shifts to three) and the new
5 pay plan that was coming out. He asked what was going on. I told him the guys were upset because
6 senior people would have to work graveyard and swing shifts with split days off and for shipping people
7 like me, we would have to increase the amount of work we did to keep the same pay. He said oh, he
8 would call me later that night. Around 7:00 p.m. after work ended, Armstrong called me on the phone
9 and asked me what was happening referring to needing more detail about what we had discussed earlier
10 in the day. I gave him more details about all of our concerns. He said he was aware of the proposed
11 changes, but didn't know about anything about the shift or pay issues, as it was outside his project, but
12 he would take my concerns to his boss, Jack ???, to see what he could do. Armstrong was one of those
13 supervisors who looked at work processes and the consequential effects and tried to help people. In the
14 past he and I worked in TOPP and he often came and talked to me if he felt I had knowledge that could
15 help him know more about and/or fix an issue. He did not ask me anything about my union activities.
16 Armstrong then sent me a text on 1/15/15, to tell me that he had taken my concerns to Jack and that he
17 just got out of a meeting with Jack and relayed our concerns and that Jack empathized and had
18 compassion for our concerns but we would ^{Have} just to see where it goes from here. I text him back no
19 problem, thanks for trying. He text back don't give up hope yet, that we may have to take baby steps but
20 not to give up yet.

21 Then the next meeting to organize employees was held on 1/23/15, at the union hall. I was
22 present with Anderson, Wizner and an employee whose name I have provided to the Board Agent. This
23 employee signed a card and I can authenticate the employee's signature on the card.

1 Then the next meeting to organize employees was held on 1/24/15, at the union hall. I was
2 present with Anderson, Wizner and some employees whose names I have provided to the Board Agent.
3 We discussed with them getting a union in at work. Some of these employees signed a card and I can
4 authenticate some of the employees' signatures on the cards.

5 Then on 1/25/15, I went to work and ran into Zack White, a day shift Floor Captain in Systems
6 shipping. He told me that there was union activity in California and asked me if I had heard about it or
7 knew anything about it. I said I only knew what the rumors were saying, which was that there is activity
8 in California. I actually knew what the union activity was as I had asked a Transportation Manager,
9 Robert ???, between 1/14/15 and 1/25/15, a more specific date I cannot recall and asked him if it was
10 true about the union activity going on in California. He told me that the Teamsters were standing at the
11 gates and handing signature cards to the drivers) White told me there were rumors in the warehouse
12 about an organizing campaign. I asked him if he knew anything about it because I didn't want the
13 teamsters in the warehouse. He told me no, he didn't know anything, but he had heard that whoever was
14 involved was really close to getting the union in. He asked me if I knew anything about that. I said I
15 had done some studying to protect myself after the last unionizing attempt 17 years ago, and that was
16 when Vinny and Luigi got fired for engaging in union activity. I told him I wanted to protect myself and
17 knew what my rights were. That was the end of the conversation. It is common knowledge that Zack
18 White reports everything he sees in the warehouse to supervisor Jake Myers, the day-systems shipping
19 supervisor known to be extremely anti-union. Art Manning, another Floor Captain, on a date I cannot
20 recall, has told me directly to be careful of Zack White because White tells Myers everything that goes
21 on in the warehouse and Myers was really anti-union. Both Manning and White are Floor Captains.

22 Then on 1/28/15, the employer held a mandatory town hall meeting for all morning warehouse
23 employees and managers. This meeting was held at 9:00 a.m. in auditoriums 1, 2, and 3. Present for

1 management were Engdahl, Kropman, Vaivao, Armando Gutierrez, Anthony Uris, Cindy Pimenthal,
2 and other management personnel who I cannot recall. Present for the employees were, myself, Paul
3 Wright, Thomas Wallace, Dejuan Williams, Chris Martinez, Steve Ditto, Juan Soto and too many others
4 to list, but all morning shift employees were required to be there. The employer had sign in sheets for
5 everyone to sign in on. There were 300+ people present. In summary Engdahl did all the talking. He
6 did not read from a script. Engdahl had a slide show and anti-union video he showed us which took up
7 about 1/3 of the time. At the end of the video, he then told us employees that we had the right to
8 organize. He then said here is what unions will do; they will negotiate on our behalf but everything is
9 on the table, your wages were on the table, our benefits were on the table and everything was a blank
10 slate. Some companies allow unions to come in to negotiate but the companies do that so they can
11 negotiate lower the wages for the employees. The union will only give you what Shamrock agrees to
12 give them. He said you need to look at the union cards. The union will tell you it's only for a vote. He
13 said that we needed to look at the card as it would show that we were giving up your right to individual
14 negotiation. He said that Shamrock had an open door policy and employees could talk to anybody from
15 him all the way up to the Kent and Norm McClelland and they would listen to you. He said they could
16 not make everything perfect but they could listen to us. He talked about the Teamsters and how they
17 had a Secretary/Treasurer who made \$130,000 and that was what they did with our dues money. He told
18 us he was once a Teamster and had to go out on strike when the union told him to. He said our dues
19 would support politicians that were pro-union and lobby for pro-union laws. He told us how the
20 Teamsters had initiation fees and we would have to pay initiation fees and pay dues of hundreds of
21 dollars a year. In the video it showed how organizers would tell employees anything they wanted to
22 hear in order to get a card signed. In the slide show it showed figures of monetary amounts of what fees
23 and dues would cost us. Engdahl said he didn't think the union was a good fit for Shamrock, and

1 emphasized the employer's open door policy, and that we should be able to negotiate for ourselves. He
2 said what unions did was agitate; agitate the employee against the employer. He did not say what would
3 happen if a union came in, except we could not come to management to talk about problems, as we
4 would have to go through the union to do that. At the end he asked if any employees had questions. One
5 of the loaders asked him, saying the employer has an open-door policy and we have used it, but nothing
6 happens. He said for 6-7 years we needed more pallet jacks and it slows our productivity down not to
7 have them. The employee said about a few years ago the employer rented pallet jacks and they were
8 able to improve production. He asked what the employer could do about that. Engdahl told him to make
9 an appointment with him and they would discuss it. As noted above I recorded the entire meeting. In
10 this meeting warehouse loader, Thomas Wallace, spoke up during the Employer's open question/answer
11 session at the end. Wallace asked the employer if one warehouse of Shamrock were organized, would all
12 the other warehouses be union. Engdahl told him that was a great question and fortunately no, there
13 were bargaining units in each warehouse so only one warehouse would be organized. Wallace then
14 asked, why are our competitors union. Engdahl said that a lot of it goes back years when something
15 happened to make the employees unhappy, they voted a union in. Engdahl said let me share this with
16 you, that it takes 50 %+1 to vote a union in and 70% +1 to vote them out, so it's hard to get them out.
17 Engdahl said that in his opinion that Sysco and U.S. Foods (our biggest competitors) used the unions to
18 keep wages down. He then talked about how we employees enjoyed incentives that the employer
19 provided and with the unions the employees were paid flat rates. This Employer mandatory town hall
20 meeting of 1/28/15 lasted about an hour. The employer held another mandatory town hall meeting for
21 the night shift, starting at 5:00 p.m. I know this because we day shift employees had to stay at work late
22 and cover production while the night shift attended their mandatory meeting with the employer.

1 Immediately after this meeting on 1/28/15, I had to go a round-table meeting I had previously
2 scheduled with Human Resource (HR) manager Natalie Wright, held in a conference room just down the
3 hall from HR. I went to this meeting where Natalie was present, along with another female from HR
4 whose name I do not know but who took notes. Present for employees were myself, Dave Silva, who
5 was a receiver employee, Paul Wright, Chris ?? (picker), and others whose names I could not recall.
6 Round table meetings occur from time to time, called by the employer, to find out what issues the
7 employees have that need to be addressed. The employer invites employees it wants there. Laticia ?? in
8 payroll was asked to select employees to attend the meeting. Natalie opened the discussion saying the
9 meeting was held to find out what the issues are in the warehouse and what the employer can fix. She
10 asked who wanted to go first. In summary, we discussed forklifters and repair of equipment, old
11 equipment vs. new equipment and equipment sitting in the repair shop two or three weeks until
12 Kropman authorized repairs; another employee complained about throwing more product on the belt and
13 getting paid lower, and about the issues going on in receiving. We all then complained about how
14 management doesn't listen to us. We also voiced concerns about the employer planning to change the
15 shifts again, turning two shifts into three; receivers complained that no one talked to them about
16 implementing the new procedure with the new shift change. Natalie's assistant took notes of this
17 meeting. Natalie said she would look into all of our complaints and issues and bring them up to
18 management. At the end she thanked us all for our input. This meeting lasted about an hour.

19 Later on 1/28/15, I was in aisle 59 and working my forklift when Tracy McCall, the Safety
20 Manager came up to me. He asked me how I was doing. I said fine. He told me the warehouse was in
21 chaos and that he had never seen so many angry people in the warehouse. He said he had heard there
22 had been some talk about union organization and that it served the current management right. He said
23 that management had no regard for employees in the warehouse. He said that he and Kropman were

1 always butting heads and that he had a hard time getting Kropman to do anything. We discussed several
2 issues. He told me that Kropman didn't care about the employees; that he was a penny pincher, an
3 accountant, and the reason we employees were not getting lunches and dinners brought into us (this was
4 an appreciation event that used to occur about once a month), and not getting stenciled vests, was
5 because of Kropman. He told me that if we had a union vote in the warehouse that Kropman would be
6 gone for sure and that Vaivao right after him. He told me I had an open invitation to come and talk to
7 him at anytime.

8 I then went back to work and covered the night crew attending their mandatory town hall. As the
9 employees left the town hall meeting, several of them came up to me saying it would be great to have a
10 union come in there. Some asked me what I thought about getting a union in there. I just listened to
11 them. Lerma, and Ortega were in the warehouse and had cards, but I did not send people over to them
12 as I didn't really know where these employees stood in their commitment toward a union.

13 That same night of 1/28/15, at about 5:30 p.m., the next Union meeting to organize employees
14 was held at Denny's restaurant located at 1-17 and Thomas Road in Phoenix, AZ. We sat in the back of
15 the restaurant at the back table that was not visible from the lobby area. I was present, along with
16 Anderson and Wizner. Anderson had a shirt on with a union logo. Wizner did not. Around 6:30 p.m.
17 employees whose names I have provided to the Board Agent, began showing up, until around 7:30 p.m.
18 All these employees signed cards at the restaurant. I saw them sign the authorization cards and can
19 authenticate that it is their signatures on the cards. Around 7:50 p.m., one of the employees left and
20 called me to tell me that as he left Denny's Captain Art Manning showed up at the restaurant. This
21 employee then text me and told me that about four or five employees showed up and that he had sent
22 them back to me. The employees left the restaurant parking lot without ever coming back to us. I said
23 crap, and asked him, via text, if Art was still there when the employees arrived. This employee said he

1 didn't think Art noticed them. Once we got the phone call from the exiting employee, the group at the
2 table said oh crap. Still at the table at that point were myself, Anderson, Wizner, and another employee.
3 The exiting employee called me back and said he would move Art outside. Then the employees still
4 remaining in the restaurant got up and left. Wizner and Anderson asked me what they were going to do
5 and I said we were all just going to walk out. So we walked out of the restaurant, and went outside and I
6 said hi to Art. Wizner and Anderson were still inside at that point. Art was standing on the right hand
7 rail of the entry ramp. The exiting employee was standing next to Art, down a step and I could hear the
8 two of them debating, about getting a union over the employer's open-door policy, with Art saying that
9 the employees didn't need a union because we could just go to management and talk to management.
10 This employee told Art that didn't work and was not working. Art kept saying that we employees just
11 needed to talk to management and kept repeating that phrase. The exiting employee then told Art that he
12 needed to sign a union card because once the union got in Art would be the first one fired. I told exiting
13 employee and Art that that was not right; that was not how it worked. I did not explain further but I had
14 already had several conversations with Art about the union and he knew how the process worked.
15 Wizner walked out of the restaurant and walked right between myself and Art. Anderson walked out
16 after Wizner covering the union logo on his shirt. I then got in my car and received a text from one of
17 the employees who had been with us at Denny's who told me that he had seen another employee pull
18 into the parking lot at Denny's, and this other employee spotted Art and had driven off. This employee
19 told me that the exiting employees and other union supporter employees was currently with the drive-
20 off employee and they were all gathered in the parking lot of the employer and that the exiting
21 employee had told them about Art showing up at Denny's. This employee then told me that they would
22 have the drive-off employee meet me at the Circle K across the street and East of Denny's about a half
23 a block away to sign a card. At that point as I was driving out of the parking lot I saw another employee

1 drive his car into the parking lot at Denny's, see Art standing at the rail with the exiting employee, and
2 then watched this employee just drive out of the parking lot. I then drove to the Circle K and met one of
3 the drive off employees and watched this employee sign a union authorization card on the fender of a car
4 located in front of the building. I can authenticate that it is this employee's signature on the union card.
5 I didn't think about getting the second drive-off employee to meet with me to sign a card as I was tired
6 and went home.

7 I have seen most of the union cards signed as Wizner has permitted me to see the cards. I do not
8 have copies of the cards. Wizner and Anderson and I have talked about all the employees who have
9 signed cards, and we have gone over the cards together to discuss strategies of getting other employees
10 to sign cards and have given the names of these employees to the Board Agent. I was not present to see
11 any of these employees, sign cards and do not know who got these cards signed.

12 The next day at work, one of the organizing employees, whose name I have given to the Board
13 Agent, told me that after work on 1/28/15, there were a lot of employees who met him and another
14 employee to go to a drinking spot that they frequent after work all the time. I do not know the name of
15 the drinking spot. This organizing employee told me that once there they all started drinking and
16 talking about what the employer said at the 1/28/15 mandatory meeting. This organizing employee told
17 me that he told the employees present that some of us were trying to get a union in there. This
18 organizing employee told me he got cards signed but I don't think he told me where or when that
19 happened, nor do I know the names of employees who signed these cards.

20 Then on 2/3/15, I was at Denny's around 6:00 p.m. and got a card signed by and an employee
21 whose name I have provided to the Board Agent. This employee signed a card and I can authenticate the
22 employee's signature on the card.

1 Then on 2/4/15, one of my supervisors Gutierrez or Uris, I cannot recall which one, came to my
2 work area to tell me that there was mandatory round table communications meeting scheduled for
3 2/5/15, at 9:00 a.m. at the upstairs training room in warehouse two. The employer has held mandatory
4 round-table for years held whenever the employer believes there are big problems about to get bigger.

5 After work on 2/4/15, I was at Denny's around 6:00 p.m. and met with employees whose names I
6 have provided to the Board Agent. These employees signed a card and I can authenticate the employees'
7 signatures on the cards.

8 On 2/5/15, I attended the round table meeting. Present for management were, Vaivao and
9 Natalie Wright, the HR person. Present for employees were about ten of us; myself, Frank Sanchez,
10 Matt Sheffer, and others whose names I cannot recall. Wright was taking notes. Vaivao opened the
11 meeting, I cannot recall his exact words, but in summary he told us the purpose was to get feedback
12 from us about issues in the warehouse. He told us he was going to have this same meeting with every
13 employee on the floor, the drivers and the associates in the warehouse, the employees in the meat and
14 fish plants (about 300-350 employees). Matt Sheffer asked him who decided to hold these meetings and
15 why. Vaivao said he did it to get correct communication out on the floor. Vaivao said that the same
16 message wasn't getting to all the people. He said he would go and talk to a few employees on the floor
17 and they would in turn go and talk to other employees and by the time the message he sought to relay
18 got back to him it wasn't what he had said. He said to Sheffer that he would get the right people in the
19 right department to answer Sheffer's questions. Vaivao then asked us so what were our issues. No one
20 spoke for about 20 seconds. I said that I was reluctant to talk because it didn't do any good. I said we
21 have had hundreds of these roundtable meetings and nothing ever gets fixed. I looked at Wright and
22 said I knew she was shocked the first time she heard this, and the last round table that she conducted she
23 fixed ten problems. I said but there were a lot of other issues she didn't get resolved. I talked about how

1 management treatedt us employees like shit and treated us like pieces of machinery; that we get moved
2 around, schedules changed without regards to our lifestyles or families; I talked about how they had
3 frozen the pension out (in 2012 the employer froze employees out of the defined benefit plan). I told her
4 that like she had discussed the employer began putting a matching 5% into a 401(k) plan, which was
5 nice, except the following year the employer put us on a catastrophic health insurance plan coupled with
6 an HSA with \$8000 deductible. The employer gives us \$1500 in the HSA, spread out in monthly
7 contributions over 12-months, which is fine, but to cover my wife's medical bills I have to spend \$500
8 out of pocket which means I have no money to put into the 401(k) plan for retirement. I told her that all
9 of the guys were really upset about that and upset that management no longer listens, and how the
10 employer used to have the Team Owned Process Performance TOPP program which was a good
11 program, but the employer killed it, took it away. I said that management talks about employee
12 involvement but doesn't do that anymore. Wright said that's good, that's good, but how personally was
13 I affected. I said I had to pay \$500 a month I didn't have to pay before which is a cut in pay. I said last
14 summer you affected me by changing my hours and for everyone else in the warehouse. I said guys had
15 to scramble around to get babysitters and wives had to quit jobs. Frank Sanchez asked if the HSA could
16 be front-loaded every year. He said he had to take his wife in for surgery and they wanted money up
17 front and he didn't have it. Wright basically said that wasn't going to happen. Sheffer said there was a
18 problem with scheduling work for employees Dave Martin and Carl Dejarle. Vaivao said that he had
19 made the decision to not allow them to switch schedules as he didn't want to play favorites and it would
20 set a bad precedent if he let that happen. Sheffer argued with Vaivao saying the move was good for the
21 employees and the company. Sheffer also talked about management not listening to employees on the
22 floor and said that Kropman didn't have a clue of what to do, and decisions were being made that made
23 our work harder not easier, specifically talking about the problem racking in the deep-freeze. Sheffer

1 said a five minute conversation by management with the employee would have resolved the situation.
2 Vaivao said he would take all of our issues under advisement and see what he could do with the issues.
3 I took that to mean he would try and resolve the problems, but in reality I knew he would not do
4 anything to resolve our issues, as in the past the employer has used these meetings to let everyone vent,
5 and then management hopes the issues will go away.

6 After this 2/5/15 round table meeting, other employees came up to me and told me about the
7 mandatory round table meetings they had been asked to attend. I recall that an employee, whose name I
8 have provided to the Board Agent, told me that this employee's round table meeting was held with Mark
9 Engdahl, (held either on the same day or the next day, I am not certain of the date) with Engdahl
10 conducting the round table meeting and doing all the talking. According to this employee, Vaivao and
11 Wright were also present at this meeting but Vaivao and Wright didn't talk much. This employee told
12 me that Engdahl showed the employees at this meeting an anti-union video and that there were no
13 employee questions allowed and no employee was allowed to comment.

14 Later on 2/5/15, I had a break on the south end of the warehouse and went to the south end break
15 room, around 3:30 p.m. I was chatting with Leno Arteaga, the Meat Plant Manager, (the meat plant is
16 located on the southeast corner of the warehouse building). He asked me how it was going in general. I
17 said we employees had another round table meeting and nothing was going to come of it. He told me I
18 should organize the employees. I said no, I already have a big mouth and management is always looking
19 at me. I then left the break room and worked about 10 minutes and had to stop my forklift to get a
20 battery changed. I took my recorder with me to take the battery to the battery exchange area which is
21 near the break room. I saw that Arteaga was still in the break room. I turned my recorder on before I
22 walked into the break room. Once inside the break room I noticed there were about twelve Floor
23 Captains present, and about to have a Captains meeting. I recall Floor Captain Robert Martinez, being

1 present but cannot recall who else was present. Arteaga looked at me and said out loud, here is your
2 chance to talk about the union. I told him, I said I wasn't organizing, and said, "remember I told you
3 that I wasn't organizing; you are trying to get me in trouble." I then said I told you what happened to
4 the last guys that tried to organize (referring to the employees Vincent D'Anella and Luigi Barriga who
5 got fired back in 1998 for organizing). Arteaga said yeah but the employer got fined for that and they
6 wouldn't do it again. I asked him, you don't think so? Arteaga said, he was telling me, man, that didn't
7 Shamrock have a problem with not having enough ethnicity hired, referring to how EEOC came in and
8 slapped the employer as well for discriminating ethnically during hiring. I then asked him, so if I come
9 out and tell them I am organizing they won't touch me. He said they aren't going to touch me, once
10 bitten, twice shy. I said yes they will touch me. He said no, they won't. I said I was Mr. Outspoken. He
11 said no, because I had been on the TOPP meeting board and that my record showed a different pattern.
12 He said, all of a sudden I took this route and became this other guy, and that I had the best chance of
13 anybody to do this. He said, in summary, I was not a bad guy, but I was a good employee and the
14 employer wouldn't be able to show I had an axe to grind. Then I asked him how he knew so much about
15 this. He said he used to work at Sysco (a unionized employer). He said he thought I would be
16 untouchable because the employer didn't want to open up a can of worms again.

17 During the next few days, I had other employees come and tell me that their round table
18 meetings were also all anti-union videos and no employees were allowed to ask questions or make
19 comments. I have provided the names of these employees to the Board Agent.

20 The next Union meeting held to organize employees was held on 2/7/15, at the union hall at 2:00
21 p.m. I was present with Anderson, Wizner, and an employee whose name I have provided to the Board
22 Agent. These employees signed cards and I can authenticate some of the employees' signature on the
23 cards. All the employees except me signed in for this meeting. We discussed our goals for organizing

1 other employees and when and how employees needed to talk to other employees, regarding outside of
2 work time and in non-work areas.

3 The next Union meeting held to organize employees was held on 2/12/15, at Denny's at 6:00
4 p.m. Present for this meeting were myself, Wizner and Anderson, along with some employees whose
5 names I have provided to the Board Agent. Some of these employees signed union cards and I saw them
6 sign the cards so I can authenticate that it is their signatures on the union cards.

7 Then on 2/23/15, I went to work in my work area and my supervisor Johnny Banda, told me
8 there was a mandatory communications meeting scheduled for 2/24/15 at 2:30 p.m. after shift ended. He
9 told me we would be paid for our time.

10 On 2/24/15, I went to this meeting at 2:30 p.m. Present for management were Vaivao, and Brian
11 (Ernie) Nicklen, whose title is the Forklift Manager. Present for the employees were about ten
12 warehouse employees; myself, Frank Sanchez, George Mower, Paul Wright, Benny Wabington and
13 others whose names I cannot recall. Vaivao conducted the meeting who told us that the purpose of the
14 meeting was being given to inform associates of their rights and teach them the facts about unions. I sat
15 across the table from Vaivao the entire meeting. Vaivao, in summary, said the employer has an idea of
16 who is organizing and that the Manager of the Meat Plant was approached about organizing. Vaivao told
17 us that these guys have an agenda. He said the guy who is doing this made a deal. Vaivao said he didn't
18 know what, but this guy is getting something out of it or has been promised something. He told us that
19 guys were being approached about the union during work time. He told us that before and after work
20 and during lunch, breaks were okay, but not on work time. He did not say anything about organizing in
21 work areas. Then he said there was a rumor going around that if we didn't sign a card we would be
22 fired. He said that wasn't true. We could be let go for standard things like tardy, absenteeism, being
23 under the influence showing up drunk. He said questions were being asked by associates as to whether

1 they were going to lose their jobs if the union gets in. He said that wasn't true. He said another question
2 he was being asked by associates was if they would make more money if the union gets in and that's just
3 a rumor going around. He said we were not going to lose our jobs if the union gets in and they can't
4 guarantee you that you are going to make more money. He said if anyone told us that to tell them to put
5 it in writing. He said guys were coming up to him and asking him to stop the guys from approaching
6 them about the union. He said if we didn't want to be approached anymore, to tell them no, hell no, get
7 out of my way. Raise your hand and tell us this guy is bugging me. He said that the people that were
8 organizing here had an agenda. He then told us a story of his cousin going to work for Safeway for 19
9 years and how he went into management because of disagreements with the union. He told us about how
10 unions fine their members. He repeated that associates were coming to him to tell him they were being
11 approached about the union and they wanted him to make it stop. He said he was not for or against the
12 union, but that we should be able to represent ourselves. He then showed us a video about the notorious
13 Teamster's Union, which video used terms of scandal, corruption and basically said unions are not
14 needed and they only wanted our dues. This video lasted 15-20 minutes and I recorded all that it said.
15 After the video Vaivao, in summary, said he was not there to endorse or discredit anything. He said he
16 understood that there would be meetings held out of camera (the employer has cameras in its parking lot,
17 warehouse that it has access to. The snack vendor Avanti has three cameras it owns in every break room
18 in the plant pointing to its snack racks in the break room—there are three break rooms in the warehouse
19 and one in the high rise). I asked him what he thought the root cause of the union push was. He said he
20 knew a guy was on a final warning who wanted the union in, and the root cause was because this
21 employee called in all the time, not because he was on a final. So he basically did not answer my
22 question. No one else asked questions. Vaivao said in his opinion the union had no place in Shamrock.
23 Brian Nicklen talked about how he was here in 1998 when the Teamsters were making a push and that

1 not one person he asked back then why they wanted a union in Shamrock could give him an answer. I
2 said I was here too and Vinny and Luigi were demoted and then fired for doing this union stuff. Vaivao
3 said they weren't fired. I said I did my research on this and they were both fired. Vaivao he said again
4 they were not fired and called it my opinion, as they were not fired. He said he did not want the union in
5 Shamrock. This meeting lasted about 30-35 minutes.

6 Around 3/2/15, a more exact date I cannot recall, an employee, whose name I have provided to
7 the Board Agent, handed me two cards that this employee had gotten signed. This employee saw them
8 other employees sign their cards so this employee can authenticate the cards.

9 On 3/15/15, former supervisor Amy Martinez sent me a text and asked me if I had hear that
10 Tyler Armstrong was fired on 4/13/15. I said no. She said since his discharge she had tried to contact
11 him twice and on Facebook, and no contact. She then sent me his new number so I could call him.

12 Around 3/18/15, I finally called Armstrong and he told me that he had been called into HR and
13 that his boss, Jack ?? and Natalie Wright were there. He said that Jack told him that Tyler and the
14 company were going in separate directions and that they just needed to part ways. Tyler told me he
15 asked if it was his work, something wrong with his projects. Jack told him no. Tyler told me he told Jack
16 he didn't understand what the problem was. He then asked Natalie if he could have the opportunity to
17 apply for other positions or a transfer in the company. She told him no, but that he could reapply after he
18 was discharged, but would lose seniority, benefits and time in service.

19 During March 2015, union representative Anderson was out of town so we didn't have any union
20 meetings. I know more union cards were signed but those cards were gathered by other organizing
21 employees so I cannot authenticate them.

22 Then on 3/31/15, the employer held another mandatory meeting called Town Hall/Pension Plan
23 meeting. This meeting was held in auditorium 1, 2 and 3, conducted in two separate meetings to

1 combine employees from the three shifts. The meeting I attended was held at 9:00 a.m. The employer
2 shut down production to hold this meeting. The employer has held Town Hall meetings in the past,
3 concerning the state of the company, about once a year. Present for management for this meeting were,
4 Bob Beake, the Vice-President of HR, Cindy Pimenthal, manager of benefits, Ivan Vaivao, Armando
5 Gutierrez, and Randy McClanahan and all the other managers in the plant standing up against the walls,
6 whose names I cannot recall. Beake conducted the meeting. I cannot recall all his exact words, but in
7 summary, Beake started the meeting with information about the state of the company, what's happened
8 with the company in the last year, where it's going. He said we would talk about the 401(k) and other
9 exciting things happening. He said Norm and Kent McClelland couldn't be present at this meeting but
10 wanted to be so they each had prepared a short video to show us. Beake gave us the usual rhetoric, they
11 appreciated us, and all our hard work, they shared their profits with us and other things the company had
12 provided for our benefit; what a great family we are. Beake did not promise any better working
13 conditions during his speech. After Beake spoke about the company data and showed the videos, Beake
14 opened up the floor to employees for questions and answers. A few employees raised their hands to ask
15 questions and Beake answered their questions. About the fourth or so employee who raised his hand was
16 Thomas Wallace, a loader. Beake called on Wallace and Wallace asked if there was any way we
17 employees could get our old insurance back. A chuckle rippled through the audience with that question.
18 Beake said, well the company has made its decision and that it was not cost effective for the company to
19 have the old insurance, and that this was affected by Obamacare, and this was the way we had to go and
20 everyone would just have to manage that. Then Wallace asked Beake, with three billion in profits (that
21 number came from Beake's information earlier) is there any way the employer could fully fund the
22 employees' HSA. Beake said there was a difference in sales and profits, and that the company had had
23 three billion in sales, not profits. Beake said that the company's margins were slim, they made pennies

1 on the case. So it wasn't possible to fully fund the HSA and most employers did not fund even half of
2 the HSA like Shamrock does. Then another employee raised their hand to ask a question. Wallace was
3 not insubordinate or disrespectful to Beake in any way. Wallace like all the rest of the employees who
4 asked questions did so with proper deference; no one acted inappropriately. Beake also did not appear
5 to be upset in any way after answering Wallace's questions.

6 Then on Saturday, 4/4/15, we held another union meeting to organize employees at the union
7 hall. Present for this meeting were myself, Wizner, and Anderson. I cannot recall if there was a sign in
8 sheet or not. I don't recall which employees attended.

9 Then on 4/6/15, as I was leaving work at the end of shift, I found out from another employee,
10 whose name I have provided to the Board Agent, that Thomas Wallace had been fired that day. This
11 first employee told me that a second employee (whose names I have provided to the Board Agent) had
12 told him that the second employee had talked to Thomas as he left that day and Thomas had told the
13 second employee that the employer fired him for asking a question in the Town Hall meeting. I then
14 went and talked to this second employee and asked this second employee if it was true that Thomas got
15 fired for asking a question in a meeting. This second employee said yes and that Thomas had told the
16 employee this information on his way out of the building. I then went to the locker room, got my gear,
17 and called Thomas on my way out. Thomas told me that he had gotten fired that day. I said I had heard
18 it was for asking a question and he said yes. I said that was not possible, as he had to have had a bad
19 load report, or an attendance problem to get fired. He told me that he asked about the insurance in the
20 town hall meeting and Vaivao had told him that that was disrespectful and fired him. Thomas told me
21 that earlier that day he had been brought in and sat down with Vaivao and James Allen, and that Vaivao
22 told him that the question Thomas asked in the town hall meeting was disrespectful and that it was
23 senior staff who had decided his question was disrespectful. They decided that if Thomas wanted better

1 insurance they felt he should have the opportunity to find better insurance at another company, and they
2 were going to give him that opportunity and let him go.

3 Then on 4/7/15, while I was at work, by lunch time I heard several employees talking about the
4 news of Thomas getting fired because he asked a question in the Town Hall meeting. Employees were
5 discussing Thomas' discharge on the work floor, during work time, and in the break room on break and
6 during lunch. I talked to several employees myself and we discussed how no one ever got fired for
7 asking a question. The only employees that got fired in the past all had attendance issues, low
8 production, problems with shorts, damage or mispicks, but no one had ever been let go for asking a
9 question. In the past we have had employees even cuss at managers and still have a job. I recall around
10 6-8 years ago, an employee who had a temper, Bill Hilton, was allowed to throw boxes out of trucks,
11 and cussed at Frank Shane and other managers who tried to calm him down. Hilton was permitted to act
12 like that for months and nothing happened to him. I think Hilton eventually attacked someone physically
13 and was let go after that. I myself have cussed at a manager, Chris O'Brian, when I was with the TOPP
14 program because the employer had a lack of movement on a project and O'Brian was playing politics
15 with me. I raised my voice in anger at O'Brian during a TOPP meeting and did not receive any
16 discipline for my conduct.

17 By Wednesday, 4/8/15, it seemed that everyone in the plant knew about Thomas being fired on
18 Monday, because guys on second shift were asking me about Thomas and if it was true that Thomas got
19 fired for asking a question at the Town Hall meeting. Some employees on second shift were also texting
20 me asking if Thomas got fired for asking a question. I told them all yes, it was true Thomas got fired for
21 asking a question. Most of the employees couldn't believe it

22 Sometime around 4/8/15 or 4/9/15, another employee, whose name I have given to the Board
23 Agent, came to me in my work area and told me that he had walked into supervisor Frankie

Valenzuela's (whose title I think is shipping supervisor) office. This employee said he stood at the door listening while Frankie was talking to another employee, whose name I have provided to the Board Agent, in Valenzuela's office. The office is about 20' by 12' in size. This employee who came to me told me that he heard Valenzuela tell this other employee, that Vaivao had gotten a call from Kent McClelland (owner) telling Vaivao to fire Thomas for asking the question in the Town Hall meeting as Kent thought it was disrespectful. Valenzuela told this person that Vaivao had argued with Kent telling Kent that Vaivao didn't think it was right, and he didn't want to do it, but because Kent wanted him to fire Thomas, he would do it.

Then on 4/8/15, I got a text from another employee, whose name I have provided to the Board Agent, who text me that Duane Thomas, whose title is the Graveyard shift supervisor, had a third shift meeting and told all the loader employees that the reason Thomas was fired was not because he asked a question in the Town Hall meeting but because Thomas asked the question multiple times by changing it around.

Also on 4/8/15, I spoke with another employee whose name I have provided to the Board Agent, came to my work area and told me that management had called a meeting for all the loaders to attend. This employee didn't tell me who in management had called the meeting. Management told the loaders that Thomas was fired because he got into a heated argument with management right after the Town Hall meeting when management was just trying to talk to Thomas to clarify his question.

On 4/9/15, I received a text from another employee, whose name I have provided to the Board Agent, saying he was next to get fired. I exchanged texts with him, as he is on a different shift. He told me in these texts that he had been hearing rumors on the floor that he was next to get fired. He said a couple of forklift employees had told him this and was checking it out.

1 On 4/9/15, I also got a message from another employee, whose name I have provided to the
2 Board Agent, telling me the employee had heard all the stories going around about why Thomas was
3 fired and said the employee smelled bullshit. This employee told me that what Frankie Valenzuela had
4 told this employee about why Thomas was fired was more accurate.

5 On 4/18/15, we held another union organizing meeting for employees at the union hall at 2:00
6 p.m. Present for the union were Wizner, and Anderson. Myself and one other organizer, whose name I
7 have provided to the Board Agent, were present. This other organizer presented two signed cards. Nine
8 new employees had committed to attending this meeting and no employees showed up. I received a text
9 from one employee, whose name I have provided to the Board Agent, prior to the meeting stating the
10 employee hoped people showed up for this meeting because everybody was scared. This meeting was
11 the first union meeting scheduled after Thomas had been fired, and no one showed up. Prior to Thomas'
12 discharge we had averaged about 4.77 cards signed a week.

13 On 4/19/15, I sent Amy Martinez a text with a link to a copy of the unfair labor practice charge
14 the union had just filed against the employer for discharging Thomas Wallace. In this text exchange
15 with Martinez, she told me that she heard that Tyler [Armstrong] was warned to stay away from me and
16 that Jerry [Kropman] thought he [Tyler] was the one starting the union. She said the guy who told her
17 this is looking for another job and may help after he gets another job. She did not tell me who her
18 source was for this information.

19 Then on 4/26/15, Sunday, I was at work in the break room, on my lunch break. Present in the
20 break room also were some employees whose named I have provided to the Board Agent, and about
21 eight other employees whose names I do not know. No supervisors were in the break room, as
22 supervisors do not normally hang out in the break room. Supervisors do come into the break room to
23 grab a cup of coffee, but then they leave. I stood up and said guys can I have your attention please.

1 People stopped eating and turned to look at me. I said, you may have heard that there is a push for a
2 union in here. I said that is true, and I am on the organizing committee and will be happy to answer any
3 questions you have about the union and happy to talk to you on lunches, breaks or before or after work. I
4 said, if you come ask me about the union in the aisles I will have to refer you to coming to me during
5 lunches, breaks or before and after work. I said there was a lot of misinformation floating around out
6 there such as there is a union initiation fee. I said that was totally false, there is no initiation fee. So if
7 they had any questions I was the guy to come talk to. Thank you for your time. Employees then went
8 back to eating. I was told later, by another employee whose name I have provided to the Board Agent,
9 that my announcement went viral in the warehouse. I was told later, about five hours later, by Lerma
10 who is on the next shift, that my announcement went viral in the warehouse, meaning everybody knew
11 what I had done. He text me there was a big buzz already. He then said two employees got walked out,
12 one was a card signer, but he didn't know the reason. I text this employee back asking who got walked
13 out. The employee said one, I had a lot of balls and one employee walked out was Jose Garcia. I
14 received other texts from other employees calling me the disturber of the peace, another one called me
15 Gandolf Stormcrow (in reference to the Lord of the Rings character who was accused by the evil wizard
16 of causing trouble). We found out later Garcia was not walked out, he quit.

17 On 4/27/15, I spoke to another employee via telephone whose name I have provided to the Board
18 Agent, and he said the night shipping guys all knew about me giving my union speech in the break room
19 to employees, and told him all about it when he came into work at 2:00 p.m. He told me that I had big
20 balls, and asked me if I was going to get fired for doing that. I told him no it was a calculated risk.

21 On 4/27/15, during our 9:00 a.m. break, I was in the upstairs break room where about 20
22 employees were also taking break. Present were Carl Dejarle, Dave Silva, Paul Wright, Roy Ahja, Chris,
23 Jeff Mulineax and others whose names I cannot recall. No supervisors were present. I stood up and said

1 almost word for word the same thing I had said in the break room the day before. As soon as I started
2 talking three employees got up and left the break room; Chris ??? and two other employees whose
3 names I did not know. I finished my announcement and sat down. At that point Vaivao stormed into
4 the break room with a really angry-stern look on his face. He did not look at me as he came into the
5 room or look my way at any time. He went over to the coffee machine but did not get coffee. Instead he
6 began a conversation with Carl. Right after Vaivao entered, Tim Georgio, an inventory manager,
7 entered the break room and walked over to Vaivao and turned around and began watching ESPN on the
8 overhead television. Those two stayed in the break room for the next 12 minutes. At that time I left as
9 my break was over with both supervisors still in the room.

10 I returned to my work area, and Floor Captain Art Manning came to me and asked me if it was
11 true if I did what he had heard I had done. I said was he talking about my announcement about being on
12 the organizing committee. I said I can't talk to you about the union on the floor, but if he wanted to talk I
13 could do it at break or lunch. Manning said, did I really do that. I said Art I cannot talk to you about it
14 on the floor. He said well, I needed to watch my back as they were watching the both of us. Manning
15 then left the area.

16 Then on 4/29/15, Art Manning had called me the night before and asked to meet me for breakfast
17 at the Denny's on I-17 and Thomas Road. He told me that he wanted to talk to me about what's going
18 on, about this union stuff. I said okay and agreed to meet with him at 5:00 a.m. I arrived on time and
19 Manning never showed up.

20 Later on 4/29/15, after my break about 9:00 a.m., I was in my work area out on the dock in full
21 view of everyone working on the dock when Manning came up to me asking to talk with me. No one
22 else was present. I told him I could not talk to him about the union. He said okay he didn't want to talk
23 about that. He said he wanted to apologize for missing breakfast; he had overslept, but that he did need

1 to talk to me about what I was doing. He said that I needed to take a look at what I was doing and that I
2 had opened up a lot of eyes upstairs, people I didn't even know about. He said I needed to go talk to
3 these people as they are listening. He said I needed to take a step back from what I was doing and go
4 talk to these people upstairs. I asked who he was talking about. I said Mark Engdahl, as I had talked to
5 him already. No he said above Mark. I said was he talking about Larry Yancy, or somebody else,
6 because I knew Manning was supposed to have meeting with guys like that. He said he hasn't had that
7 meeting scheduled yet. I said okay. I said so what did he want me to do. He said, take a step back, back
8 up a little bit, and go talk to these guys. I took this to mean he wanted me to stop trying to bring in the
9 union. He told me that Mark Engdahl is really kissing ass right now as I got him really shook up; all
10 upper management shook up. I said what did he want me to do? I had been talking to these guys for
11 eight years. He said well he understood that. I said they haven't listened so what difference did it make.
12 He said I need to go talk to them. I told him they know where I work and what my schedule is and if
13 they really want to talk I was here. About that time Johnny Banda, my supervisor walked up and asked
14 us what we were talking about. I said we are talking about work. Banda said okay, because it was
15 looking a little animated over here. Manning and I had some small talk with Banda and Banda asked
16 Manning to come with him down on the dock and I went back to work. This meeting lasted ten minutes.

17 Then on 4/29/15, I was at work and called into a meeting at 9:47 a.m. in the upstairs training
18 room. Present in the room when I arrived were Vaivao, Kropman, Nicklen, and Engdahl. Present for
19 employees were George Mower, Guy Hamilton, Al Fonse, Frank Batchelder, and others whose names I
20 cannot recall. Engdahl said the meeting was called to go over the schedule changes for the summer. He
21 handed us all copies of the changes. He said before we talked about that, he wanted to talk about this
22 union thing and pulled a paper from his pocket with notes scribbled on it. He said he understood who
23 was behind this union thing and that the person, who he referred to as "you" don't care what anybody

1 else thinks, that he understands you are doing it for your own personal reasons. He said a lot of stuff was
2 being said that was wrong and he was going to call what was bullshit, bullshit. He said the union will
3 hurt Shamrock, it will hurt all of you. He said it will hurt everybody in the future, and this was all in his
4 opinion. He said he had been a Teamster for seven years and knew the union inside and out and he
5 could tell us it was not good for us at Shamrock, that he could tell us that. He said, what do you all think
6 would happen if we got a union contract. In his opinion do you think the union would negotiate a better
7 contract for you than another shop in town; how would they explain that. The union would be crazy to
8 give you a better contract than Sysco and U.S. Foods. He said Arizona is a right-to-work State. He said
9 one of you is thinking because it is a right-to-work State you can opt out of paying dues and you would
10 be right. But you would be covered by whatever is negotiated. There are no guarantees about bargaining.
11 No one can tell you that you will have more or less. Shamrock sets working conditions and pays benefits
12 and wages; not the union. The only thing the union can do is come to us and ask for things. The
13 employer doesn't have to agree to anything. He said again with emphasis, ANYTHING. NOTHING,
14 other than what the employer wants to. It's bargaining. He said bargaining can go on forever. It's
15 collective bargaining and all you have to do is bargain in good faith. These are facts that people will not
16 tell you and he wanted us to hear them.

17 Also on 4/29/15, during my break about 1:00 p.m., Safety Manager Joe Remblance, who is not in
18 my supervisory chain, came from the other end of the aisle to come up to me on aisle 49, after seeing
19 that I was talking with Nile Bose. Aisles are about 50-75 yards long. Remblance asked us what we
20 were talking about. We told him about work. Then he asked us if we were on break. We told him yes,
21 we were on break. Remblance didn't leave and instead remained talking small talk with us. As and
22 Remblance left he asked me how much more time did I have on my break. I said a couple more
23 minutes. He said be sure to get back to work. Remblance had never before asked me if I was on break,

1 he didn't care, as I was not in his chain of command. Remblance has come up to me in the past when I
2 was talking to other employees and joined in conversations I was having with other employees, but he
3 has never come up to me to break up a conversation between myself and another employee or to ask if I
4 was on break or not.

5 Then after work on 4/29/15, Manning called me at home. Manning said about the same things to
6 me that he said earlier that day. He told me if I wasn't so closed minded and were open, and go talk to
7 these guys, we could settle this thing. He asked me what I wanted. I told him that I was tired of talking,
8 that management says they will do something but never do it—all talk no action. Manning told me I
9 needed to go to upper management, and talk to them. I just told him, we were over a hundred strong and
10 if management wants to talk to me they can come talk to me, but that we're coming; we're coming.

11 Then on 5/1/15, I got a text from a employee lead organizer, whose name I have provided to the
12 Board Agent, telling me that he caught his supervisor, going through his personal property clipboard and
13 that the supervisor admitted to this employee that he was told by management to search this employee's
14 clipboard to see if this employee had union cards with him.

15 On 5/3/15, I had an employee, whose name I have given to the Board Agent, text me and tell me
16 that on 5/1/15, as he arrived at work that day, he ran into Jerry Kropman and asked Kropman how he
17 was doing. Kropman said, "these people are driving him fucking crazy trying to get this union in
18 here. .fuck them all in the ass."

19 On 5/6/15, Manning had the same conversation in aisle 69 that we had on 4/29/15, except that
20 Manning said that I should back off this union push for three weeks and see what management did. I
21 asked him if he had had that meeting with upper management that he said he was going to have and he
22 said no. At that point, I saw Safety Manager Joe Remblance, walk across the other end of the warehouse
23 to walk up to Manning and me, and ask us what we were talking about. Then he asked me if I was on

1 break. This was the second time Remblance had come up to me and asked me if I was on break. I told
2 Remblance, no; that the Captain had stopped me to talk to me and that he was my superior. Remblance
3 said oh. Manning affirmed that he had stopped me to talk to me. I then said to Remblance that it
4 appeared that he was engaging in surveillance of me and that was illegal. Remblance winked at me and
5 said that is a matter of opinion isn't it. I said this was the second time he had done this to me in less than
6 a week. He opened his mouth, but Manning said something like hey Joe was just doing his job, and we
7 all broke up the meeting after that. I have not seen Remblance come up to me like that again since I
8 made that comment, nor have I seen any other supervisors

9 Also on 5/6/15, in the upstairs break room, I was on lunch around 11:00 a.m. and stood up and
10 called for attention from all who were present. No one from management was present. Present for
11 employees were forklifters Dave Silva, Matt Scheffer, Carl Dejarle, Paul Wright and a few pickers and
12 loaders whose names I cannot recall, for a total of about 15 employees. I said I just want to answer the
13 poster on the Hostess strike that management posted behind the employer's glassed-in and locked
14 bulletin board located in about 3-4 places in the warehouse. I said I wanted to explain about the Hostess
15 strike and that first of all this occurred during a three year process, that Hostess was already in
16 bankruptcy when the members of the BCTGM voted to go on strike. I said the reason they did that was
17 in the first year Hostess came to the members and asked for a 4% pay cut so they could modernize the
18 plant and the members agreed to that. Six months after that, Hostess stopped paying into the pension
19 fund and then asked for another 4% in pay cut because they couldn't modernize the plant on the first pay
20 cut. About this time, Engdahl walked into the break room, which he has done from time to time to get a
21 cup of coffee. He stood at the coffee machine pouring a cup of coffee for about four minutes. I
22 continued to explain to the employees about the Hostess strike and that the members of the union agreed
23 to give Hostess another 4% if Hostess got the pension plan caught up. By the time the strike came up,

1 the employer had failed to make the payments into the pension fund, and the Teamsters who were
2 supposed to be supporting the BCTGM went behind the BCTGM and negotiated their own deal with the
3 employer. About that time Culligan, the Security manager, walked into the break room which was a rare
4 occurrence. I continued talking and said to the employees so that was the reason the BCTGM went on
5 strike –it was to cut off the employer having revenue, so that another company could buy out the
6 employer. When Hostess was bought out, the employees voted the BCTGM back in and if the BCTGM
7 did such a bad job why are all employees there now members and not one employee is a member of the
8 Teamsters. I sat down and Engdahl and Culligan left the break room.

9 On 5/13/15, I received in my home mail, a letter from Kent McClelland. I have provided a copy of this
10 letter to the Board Agent. This letter was dated 5/8/15, and this letter said,

11 “It has come to my attention that some associates have recently been subjected to threatening, violent, or
12 unlawfully coercive behavior by other associates. This is a very serious matter and one that I take
13 personally. Let me be clear such behavior is **not** consistent with the Shamrock- Foods Company culture
14 and values that are central to us. Shamrock has been in business since 1922, and has **never** tolerated
15 associates behaving towards each other in a manner which is violent, threatening, or unlawfully coercive.
16 Shamrock Foods Company has always celebrated and encouraged the diversity of its associates and will
17 continue to do so. Associates should not be physically afraid of coming to work. We will not allow
18 associates to behave in a manner which violates the law through threats of violence, or unlawful bullying.
19 Simply put, this type of behavior is unacceptable and I will make every effort to stop it at our workplace.
20 To that end, if you have been the victim of such behavior, in any way, shape, or form, however minor,
21 please promptly report it. Shamrock will fairly and thoroughly investigate all allegations. If the complaint
22 has merit, Shamrock will take appropriate action against anyone threatening associates and refer the
23 matter to law enforcement for prosecution to the fullest extent of the law if that is the right course of
24 action. Each associate is expected to perform their work in a cooperative manner with
25 management/supervision, fellow associates, customers and vendors
26

27 I appreciate your hard work as we continue to grow our business locally and into different geographies. I
28 tell everyone that we have the best associates and I am proud of your strong work ethic and dedication to
29 this Company, day in and day out. It is my hope that we can continue to work together to provide our
30 customers with the superior service that they have come to expect from Shamrock Foods Company.
31

32 If you have any questions about these issues, feel free to come to my office to discuss it or review it with
33 your supervisor at any time.”
34

35 In working for the employer for eighteen years I have never seen a letter like this sent to
36 employees. I took this letter to be part of a continuing warning that Engdahl and Vaivao had delivered

1 to one of our organizing employees a few days earlier, the name of this employee I have provided to the
2 Board Agent. I took this letter to mean that the employer was more strictly enforcing its harassment
3 policy, but that what McClelland referred to as “unlawfully coercive behavior by other associates” was
4 aimed at our union activity. In the past we have had employees get in fights, and get into heated
5 arguments with other employees before and we never had a letter like this get issued to us employees. I
6 know that Engdahl’s and Vaivao’s warning, coupled with this letter had a chilling effect on the
7 organizing employee, and he became subdued. He stopped talking to employees about the union like he
8 used to and has substantially slowed down his union activities at work. I also stopped talking to
9 employees in the aisles, and careful to only to talk to people in the break room or lunch room and if
10 someone gets adamant about their opinions, I immediately back off and do not try to convince them
11 about the union.

12 I know of two employees who after this letter from McClelland issued, got into a physical fight
13 with each other and were walked out. But the employer has always treated that behavior in the same
14 manner. I have no direct evidence as to who was involved in this altercation.

15 Then on 5/14/15, at 9:52 a.m., I received a text from other employees, whose names I have
16 provided to the Board Agent, that on 5/13/15, at 11:26 p.m., Robert Perez, a high rise picker, was
17 walked out, discharged, by supervisor ??? for punctuality issues. Perez was a union supporter. That
18 same day, at 11:26 p.m., I received a text from these same employees, reporting that Dajaune “Snoop”
19 Scott was walked out by a supervisor for insubordination. I was told by this same employee that another
20 employee got walked out but that this employee didn’t know the name of the third employee in two days
21 being walked out. I have not known of or heard of the employer discharging three employees in a two
22 day period for over six or seven years. The last time I heard about more than two employees getting
23 walked out was over six years ago, and that was not during any organizing campaign, instead part of the

1 employer's method of cutting down the workforce during slow order seasons. The employer hasn't done
2 anything like that for a good six or seven years, maybe longer.

3 On 5/15/15, I was leaving work and saw an employee, whose name I have provided to the Board
4 Agent, outside the building in the employer's parking lot, sitting in his car. He stopped me and asked to
5 talk to me. He asked me what was going on with the union campaign as employees were scared inside.
6 He said the employer was calling people into the supervisors' office talking to them about union and
7 talking to them in the aisles asking them questions about the union. He did not mention which
8 supervisors were doing this. I told him we were doing all right, and had signed up half the people in the
9 warehouse. He mentioned that he was worried because people were getting fired. I told him that
10 management had a fifty/fifty chance that if they fired someone it was a card signer. I told him that he
11 needed to call the Board Agent investigating the case and report what the employer was doing with
12 employees. I asked him if he had been called into meetings himself and asked anything personally. He
13 said no, but other employees had been called into meetings and when they came out they talked about
14 what the employer was asking them questions about the union.

15 On 5/19/15, I called and spoke to Scott, the discharged employee, who told me that the night he
16 was fired that his supervisor had been dogging him all night that night. He told me that his supervisor
17 told him to clean up the belt and he had told his supervisor other employees were standing around not
18 doing anything. We didn't get to finish his story and I told him to call the Board Agent. I understand
19 from other employees who were there, whose names I have given to the Board Agent, that Supervisor
20 Leeland ??? told Scott to clean up the belt and Scott said there were a lot of guys just standing around
21 doing nothing so why didn't Leeland have them do it as he was still loading his truck. Leeland told
22 Scott to do it. Scott said he wasn't going to do it and said he would take the write up for it. Leeland told
23 him that was insubordination and there would be no write up, he was fired.

1 On 5/19/15, we held another union organizing meeting at Denny's restaurant on I-17 and
2 Thomas road. Present for the union representatives were Wizner, Anderson, John Price and Marco
3 Mendoza, an International Representative from Los Angeles. I have provided the names of the
4 employees present at this meeting to the Board Agent. No new employees showed up at this meeting, so
5 no cards were signed. We decided in this meeting to hand out union flyers at work on 5/20/15 and
6 distributed these flyers to the employees attending this meeting. The bulk of the meeting was conducted
7 in Spanish, and Marco talked with me a lot about the NLRA. We determined one of the employees was
8 going to take flyers into break rooms at lunch.

9 On 5/20/15, after I finished my shift around 2:30 p.m. headed out to the employer's Virginia
10 Street entrance gate, on the north side of the warehouse which is where employees enter the employer's
11 parking lot to park their cars,. I went there to join Thomas Wallace, Eric Anderson, John Price and
12 Marco Mendoza, who were scheduled to set up and begin handbilling the warehouse around 1:30 p.m.
13 which was during a shift change time. This parking lot has cameras all over the parking lot, sitting on
14 the tops of light poles, with a camera on every third or fourth light pole, a dark-bubble 360 degree
15 camera. Prior to my shift ending, around 1:55 p.m., I was working in an aisle and carrying my
16 communications radio, I heard Armando Gutierrez(the systems day shipping manager), called Anthony
17 Urias (systems day shipping supervisor) over the radio, saying in a frantic voice, "get up to my office."
18 Though I do not have direct knowledge, I attributed the frantic call to Urais to the fact that our union
19 organizers were outside handbilling. So once I got off shift, I passed the outside smoking area, where
20 saw John Culligan, whose title is Security Manager, standing. I passed right by him as I left work. This
21 area has a direct line of sight to the front entrance gate and he and I both could see the handbilling going
22 on. I got into my car, drove outside the gate and parked off property then came back to help the guys
23 handbill. Culligan remained in the smoking area, standing and sometimes sitting down at benches

1 watching us handbill the whole time. Culligan did not hide the fact in any way that he was watching us
2 handbill. Myself, Wallace, Price and Anderson were on one side of the entrance sidewalk and Marco
3 stood alone on the opposite side. We all made sure to stay on the sidewalk and keep egress and ingress
4 open and clear. We did not step off of the sidewalk. We handed flyers to employees who drove past
5 who stopped to take the flyers we held out. I have agreed to provide a copy of this handbill to the Board
6 Agent. This handbill was two-sided and listed questions and answers about what the union was and
7 what employers could and could not do during an organizing campaign. We did not stop any cars. If
8 employees stopped we handed them a flyer, if they didn't stop we just waved the flyer. There was only
9 one paused car as one female employee took the flyer and asked me some questions about what was
10 going on. I told her about the union campaign. This pause lasted about 15 seconds. The car behind her
11 honked then pulled out from behind her car and continued through the gate entrance. We handed out
12 maybe 10-12 flyers, and I was out there for about 35-40 minutes. Wallace told me that Kropman had
13 also come outside to watch them handbill before I got there, and Wallace told me he stared Kropman
14 down and Kropman did not come over to talk to him. He did not tell me how long Kropman watched
15 him.

16 With regard to the employer issuing more harsh discipline to employees since the beginning of
17 the union campaign. An employee, whose name I have given to the Board Agent, called me on
18 4/24/15, to tell me he was worried about losing his job. He told me that he had brought out the wrong
19 pallet to the dock and it got loaded, labeled it and been delivered to the customer. He told me this was
20 the second time in seven weeks he had done this. He told me the first time he did it, the employer issued
21 him a verbal warning. He told me that Vaivao told this employee that this incident was serious and that
22 Vaivao was going to take the matter to HR to see what they said. (Normally this kind of discipline is
23 handed out by this employee's immediate supervisor, Jake Myers or Armando Gutierrez, and Vaivao not

involved in the discipline at all). Then about a week later this employee called to tell me that the employer decided to issue him a one-day suspension that he would be serving on 5/1/15. This employee told me it was just this kind of stuff the employer was pulling was the reason why we needed the union in there. The employer has a discipline policy on page 64 of its Associate Handbook that states the following:

If the associate's performance, work habits, overall attitude, conduct, or demeanor becomes unsatisfactory in the judgment of Shamrock, based on violations either of the above or any other Shamrock policies, procedures, rules, or regulations, the associate will be subject to disciplinary action, up to and including termination.

Discipline will be administered utilizing the following guidelines, but discipline may start at any level within this process.

Step 1 Counseling

Step 2 Verbal Warning

Step 3 Written Warning

Step 4 Final Warning / 3-Day Suspension

Step 5 Termination

I do not know of any other employees with only two incidents of mislabeling or mispicks who have been suspended by the second incident.

With regard to ^{Amy (SP)} Annie Martinez, a former supervisor, talking to me about the union campaign.

Amy Martinez was a Business Process Improvement manager for the employer and quit in December of 2014. She now works for an insurance company in Denver, CO. We were and continue to be friends. Martinez headed up the TOPP program and put it in place and she and I worked on several projects together. Around 2/4/15, Martinez called me and left a message around 9:30 a.m. She said it was important and I needed to call me. About 10:00 I called her from the men's room. She told me she needed me to just listen. She said she didn't want to know what I was doing or any details. She said she knew I had good reasons for what I do, and that I needed to know that whatever I was doing that my name was circulating with upper management. She said I needed to be extremely careful. I told her that I would and asked her if she could share the source of her information. She said no that it was

1 somebody that was credible and knew that she cared about what happened to me. We then hung up.
2 Later that day at 5:30 p.m. after my shift ended, I called Martinez and asked her to give me a little more
3 detail and that she couldn't tell me who the source was but that it was someone that was associated with
4 upper management and the person was outside of operations. She told me that while a person could not
5 be fired for union activity, like Vinnie and Luigi, this person told her that management could gather
6 other evidence [of policy violations] until they had enough to fire the person. She said she didn't want to
7 know what I was doing, but she knew that if I was involved, it was for the right reasons and to just be
8 careful. She eventually told me who her source but I decline to disclose that.

9 With regard to the status of the organizing campaign, with all the conduct the employer is
10 engaging in such as the interrogations of employees and their union sentiments, the employer watching
11 us more closely, the employer threatening some employees with loss of benefits, and threatening
12 employees not to talk about the union on the floor or in the break rooms or they could get into serious
13 trouble, and now the employer discharging four employees inside of five weeks, coupled with all the
14 employer's anti-union meetings and flyers, it is clear the employer's conduct is not isolated and forms a
15 pattern aimed at destruction of the union's organizing campaign. We estimate the bargaining unit to be
16 around 260 employees, with all of these employees subjected to interrogations and surveillance by their
17 supervisors and to the Town Hall meetings and ten man meetings where the employer is soliciting
18 grievances. As far as how many employees know about the employer's unfair labor practice conduct,
19 everyone on both shifts knows about Thomas Wallace being discharged for asking a question at the
20 Town Hall meeting. I am not sure how many people know about Robert Perez, Dajuane Scott or Victor
21 Martinez being discharged, but whenever anyone is in trouble in the warehouse, like being called to a
22 supervisor's office, or gets issued discipline, word spreads like wildfire about what happened to them.
23 The employer has not hidden the fact that the anti-union campaign comes from the highest levels of

1 Kent and Norm McClelland, as it was Kent who distributed the letter to employees about not tolerating
2 employees harassing other employees after the union campaign started. I know it was Mark Engdahl
3 also that threatened Mario Lerma to stop harassing employees or he would be in serious trouble. As far
4 as warnings issued and discharges being committed in a manner to intimidate other employees, all I can
5 say is that employees fear for their jobs after the employer walked out three employees in two days on
6 5/13/15 and 5/14/15. Two of those employees were card signers and actively attended union meetings.
7 Ivan Vaivao told us employees in several meetings that the employer knew who the organizers were and
8 knew who attended meetings, and that was said to intimidate us. The discharged employees were not
9 perceived as leaders of the organizing campaign by other employees but Lerma, who was told by
10 Engdahl to back off or be in serious trouble is perceived to be a leader of the organizing campaign by
11 other employees. As far as the discharged employees being willing to resume the campaign if they are
12 reinstated, I think Wallace, Scott and Perez would definitely resume the campaign. I don't know about
13 Victor Martinez resuming the campaign. Currently the employer's conduct is not blocking a
14 representation case or election as the Union has not filed a petition yet. The union is more than willing
15 to revive the campaign and/or proceed to an election if court orders injunctive relief. There is no
16 scattering of employees to the four winds, and three of the four discharged employees desire
17 reinstatement.

18 Since Wallace's discharge the union has held two union meetings, one on 4/25/15, and another
19 on 5/19/15. The meeting on 4/25/15, was held at the union hall at 1:00 p.m. and about 20 people
20 showed up. Only two of the employees were new attendees, with the rest of the attendees all previous
21 card signers. The two new attendees signed cards. The meeting on 5/19/15, was held at Denny's at
22 6:30 p.m. and only five previous card signers showed up. Prior to the discharge of Wallace, we
23 averaged about 4.7 cards signed a week. We got only four cards signed in the last 30 days. Since

1 Wallace's discharge it's been harder to get anyone to sign cards. Attendance at the union meetings has
2 dropped and been attended by people who already signed cards. No one has asked for their card back.
3 The campaign is pretty much stalled right now due to the employer's constant efforts to interrogate
4 employees about if we are for or against the union and the fact that supervisors are constantly
5 surveilling us. Employees are avoiding being seen with me or talking to me. Prior to the discharges
6 employees used to talk to me all the time. But since last week's discharges of three employees,
7 employees have really pulled back and are scared to be seen with me for fear of losing their jobs.

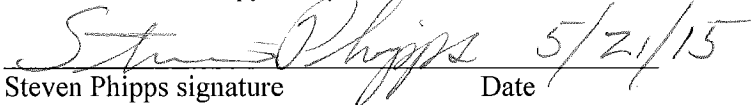
8 With regard to what languages employees speak and read at work, the majority speak and read
9 English.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

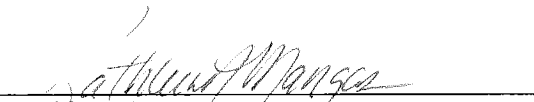
I have read this statement consisting of 53 pages, including this page; I fully understand its contents and I certify under penalty of perjury that the foregoing is true and correct.


Steven Phipps signature Date 5/21/15

I have received a copy of my affidavit.


Steven Phipps signature Date 5/21/15

Subscribed and Sworn to before me at
Phoenix, Arizona
this 21st day of May 2015


Kathleen A. Mangas
Board Agent
National Labor Relations Board

AUTHORIZATION TO RELEASE SIGNED AFFIDAVIT TO A THIRD PARTY

I, Steven Phipps, HEREBY AUTHORIZE AN AGENT OF THE NATIONAL LABOR RELATIONS
(Print Name)

BOARD TO RELEASE A COPY OF MY AFFIDAVIT TO THE FOLLOWING INDIVIDUAL(S):

<u>Michael Wizner</u>	<u>Business Manager, BCTGM, Local 232</u>
Name	Title
<u>David Rosenfeld</u>	<u>Attorney at Law, Union counsel</u>
Name	Title
_____	_____
Name	Title

Steven Phipps 5/21/15

SIGNATURE

DATE

SHAMROCK FOOD COMPANY

28-CA-150157

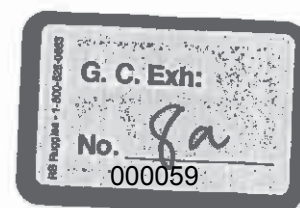
JANUARY 28, 2015, 9 AM

AUDIO RECORDING

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1 MR. ENGDAHL: All right. Welcome, everybody. Thank you
2 for all coming in here this morning and thank you in advance
3 for listening to what I've got to tell you. Can everybody hear
4 me? Can you hear me okay in the back? Okay. Let me know if I
5 start drifting down too quiet and you can't hear me anymore.
6 Okay? But usually I'm pretty loud. So -- that you go. So I
7 want to talk to you about something that's been going on in
8 Southern California, and it's relevant to us here too, and I've
9 been going around and talking to every associate in Shamrock
10 about this. So far I've made it through every driver and
11 you're the second group of warehouse people I've talked to.
12 First group I've been through this with are the folks in
13 Southern California. And I'll explain why in a minute.

14 A few months back we had our second campaign in Southern
15 by Teamsters Local 63, trying to organize that group over
16 there. Okay. There was one early on when we first opened up
17 and then there was another attempt here, you know, two and a
18 half years later they came back, knocked on the door again, and
19 tried to organize them for a second time. And I want to tell
20 you about kind of what we went through over there. I want to
21 spend a few minutes today educating every person in this room
22 with some facts and some knowledge, okay?

23 And I'll start off by telling you I'm speaking from
24 experience. I was a teamster for seven years. Okay? This is
25 back a few years when I put myself through college. I drove

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1 truck and delivered food, and I was in the Seattle area. And
2 up there I was working in what's called a closed shop, where if
3 you had a union in that shop, you had to join it or you
4 couldn't work. Okay. They automatically took my dues out of
5 my paycheck. I had to pay initiation fees. I had to go on
6 strike when they told me to go on strike. Whole bunch of
7 different fun things like that. So I'm speaking from
8 experience, but I'm also going to tell every person in this
9 room, because you're all intelligent, smart folks, trust but
10 verify. Listen to what I'm telling you, and I'm telling you I
11 won't lie to you, but trust but verify. Use the Internet. Go
12 out there. Jump on the Internet. Do your own research.
13 There's tons of stuff out there that's pro-union and there's of
14 stuff out there that's against unions. Okay? And so the
15 material is out there. You can look at it yourself, you can
16 make your own judgments. You know, I'm just presenting, you
17 know, facts today. And I'm telling you about what happened in
18 Southern California. And I'll tell you Southern California is
19 still union free. Okay? And they made good decisions and
20 they're educated now and they understand what the process is.

21 So go ahead, give me a slide here. I told you about that.
22 Give me the next slide. Who knows what a union is? Or maybe a
23 better question is: What is a union? Okay, I'll answer it for
24 you. A union is a business. Simple as that. A union is a
25 business. And what do businesses do? Try to grow? Right?

1 Okay. How does a union grow its business? Dues, more dues,
2 more members. Right? That's how they grow. So you've got the
3 union organizers, who are equivalent to our sales reps, who go
4 out and try to drum up business. Okay? How they do that is
5 they say they can fix every problem you got. Generally, not
6 true. Okay? You know, the way we fix problems is working
7 together and talking to each other. And, you know, I'll tell
8 you honestly the perfect business has never been invented yet.
9 There is no perfect business out there. Shamrock will never be
10 perfect. Okay? I challenge anyone to show me a business
11 that's perfect.

12 However, the big advantage that Shamrock has is we talk
13 directly with you, you talk with us, you bring up problems, we
14 try to fix it. Is everything going to go the way everybody
15 wants it to all the time? No. No, it's not. You know,
16 there's too many things that happen in a business this size
17 that dictate certain things. Okay. So are we going to be
18 happy all the time? No. Are we going to try to make everybody
19 happy all the time? Yeah. We try. Okay. But at the same
20 time too we owe it to each other to be honest about it. Right?
21 Okay. And everything isn't perfect in unicorns and butterflies
22 all the time. I wish it was, but it's not. At least it wasn't
23 been in my life. Okay.

24 So a union is a business. I don't begrudge unions for
25 trying to grow their business. That's their job. Okay. I get

1 that. But what I do personally feel, okay, is that a union
2 wouldn't be right here at Shamrock. I can tell you that.
3 Having been on both sides of the equation, right. It puts a
4 third party in between all of us and that third party's goal in
5 life is to create strife between us so that there is a reason
6 for their existence. Okay.

7 In Eastvale, the Local 63 Teamsters over there, I went on
8 the Internet and did the research on them. And like any other
9 business, they have to publish financials. Okay? They're in
10 the public domain, so you can look this up yourself. Okay.
11 They reported that the average dues paid by a member in Local
12 63 were \$1,200 a year. Everybody knows what union dues are.
13 They're two and a half hours of your wages every month, okay,
14 go to the union. That's standard across country. That's the
15 way it's been forever. That's the way it was when I was in the
16 union. They reported that \$1,700 were paid by each member of
17 initiation fee.

18 Now, the interesting thing was in Eastvale there was a
19 text campaign going on. They got everybody's personal cell
20 phone numbers and they were texting everybody. I'm not quite
21 sure how they got all those, but they did a hell of a job of
22 getting them all. And one of the things that they had said is,
23 well, don't worry, we're going to waive your initiation fee.
24 Okay. But what they reported under legal government reporting
25 was that the average paid was \$1,700. So if they waived some

1 something with that. So there's reasons for that, right? So
2 go ahead, Mel.

3 How do unions organize? Generally do they do it by asking
4 people to sign a card. It's called an authorization for
5 representation card, and they are usually about the size of a
6 recipe card. They can be any different color. It doesn't
7 matter what size or shape they are, though. What matters is
8 what it says on it. And what it says on it is -- it can vary,
9 but it says something to the effect of "I authorize such and
10 such a union to represent me in my dealings with the company,"
11 and it can say for wages, for benefits, for working conditions,
12 all that stuff. But the important thing to realize about this
13 card is it is a legally binding document. You sign the card
14 and you're going to pay hell trying to get it back. So think
15 long and hard and educate yourself before you sign a card.

16 People will tell you this card, if you sign this it's only
17 to express interest in finding out more about the union. Not
18 true. I challenge you. If you get one of these cards, if you
19 see it, read what it says. Read what it says. It is a legally
20 binding document, and it's not to express interest. It's to
21 sign your rights away to the union. Okay.

22 And some statistics and figures for you, so more education
23 here. It takes 20 percent of a bargaining unit to sign cards
24 and the union can call for an election. So only 30 percent
25 have to sign cards and they can go to the NLRB call for an

1 election. All right. An election means it's a secret ballot
2 election. The union runs the campaign, the company runs the
3 campaign, and then you pick a date and you have a secret ballot
4 election where the NLRB comes in and runs this election. Okay.
5 And I've been through these. And if 50 percent plus one of the
6 bargaining unit votes for a union, then you got a union. Okay.
7 It's in.

8 Now, here's the really important thing that nobody tells
9 you. If everybody in this room was a bargaining unit and there
10 was an election and only these three guys showed up for the
11 election because everybody else said "I'm not going to go vote.
12 I don't want to deal with this," right, these three guys show
13 up, two of them vote for a union, one votes against, guess
14 what? Everybody in this bargaining unit just got that union.

15 So it's really important to understand how this stuff
16 works. And it's not scary once you understand it. It just is
17 what it is.

18 Okay. Let's see. Card check is another thing that can
19 happen. Let's say the union goes out, gets 50 percent or
20 better of the folks in a bargaining unit to sign cards. Then
21 they can bring those cards and present them to the company and
22 say "we want you to represent us or recognize us without an
23 election." We got over 50 percent to sign cards. That can
24 happen too. Okay.

25 And then voluntary recognition is something else that

1 happens where a company can call the union and say, "You know
2 what, I want you to come in and represent us." And sometimes
3 -- I've seen it in the past where companies have done that for
4 probably not really good reasons, because what happens when a
5 company is represented and you go in to collective bargaining?
6 The slate is wiped clean on wages, the slate is wiped clean on
7 benefits, the slate is wiped clean on working conditions. It's
8 all up to collective bargaining at that point in time. Right?
9 So sometimes a company may say, "You know what, I think we're
10 paying too much and our benefits are too rich, so I'm going to
11 grab the union, bring them in here, sign up with them, whether
12 my associates like it or not, and we're going to collective
13 bargain."

14 And guess what? At the other end of that pipeline, when
15 you come out with a contract, all of a sudden the people have
16 got less wages, they took away healthcare benefits, this did
17 this, they did that. It actually saves companies money because
18 there's no guarantees when you go into collective bargaining
19 that you're going to come out with anything better than you
20 got. In fact, you could come out with something worse than
21 that you got. And they won't tell you that either. Okay.
22 Everything is up for grabs. There's no guarantees. Nobody can
23 guaranty you anything. They can promise you all kinds of
24 stuff, but they can't guarantee it. You ask them to put it in
25 writing and guaranty that they'll provide you something to you.

1 They won't do it because they can't, okay, because it's part of
2 the collecting and bargaining process.

3 If you sign a card, you're not going to get it back. In
4 39 years I've never seen anybody get a card back. Okay.
5 They'll tell you you can have it back if you change your mind.
6 Ain't' going to happen. Try to get it back.

7 Strike. I'm not going to go into strikes a whole lot.
8 Strikes are nasty things. But if there is a union in place you
9 have to honor the picket line. If you don't, they fine you,
10 call you bad names and it's just a miserable deal. Right?
11 I've been through a couple of them and you do not want anything
12 to do with it. They can show up at your home. They will try
13 to intimidate you. Don't be surprised. My guidance to you, if
14 you're ever approached and you don't want anything to do with
15 it, be respectful, be nice. Don't be confrontational. That's
16 not going to do any good. Stay on the high road. Okay?
17 Just say, you know what, thanks. I appreciate what you're
18 trying to sell me, but I'm not interested. Just be as nice as
19 you can, because you don't want to get into confrontations, and
20 of course there's no guarantees. Okay, go ahead.

21 The bottom line is we at Shamrock want to be able to deal
22 directly as a family with all our folks. Okay. If it's a
23 third party in the middle of that, the third party's existence
24 and basis for existence is all about causing strife between
25 both sides, and we don't want that. That's ridiculous. You

1 know. So I encourage everybody to continue to use open-door
2 policies all the way up through Norman McClelland. Their ears
3 are open. They'll listen to you. You know, if you're upset
4 about something, let's talk about it. Will I sit here tell you
5 everything is going to change exactly the way you want it? No,
6 because I'd be lying to you if I told you that, you know.
7 We've got to do what's best for the customers and our
8 associates in the very best way we can. But is everything
9 going to be perfect all the time? No, it's not. It's not.
10 But we're trying. We're trying to get there, okay? So my
11 encouragement is keep talking, keep the communication open,
12 keep the dialog open. That's what is going to get us where we
13 need to be. Okay. On the shortest path and the most direct
14 line.

15 So we've got a video I want to show you and then we'll
16 take some questions after that, if this video raises any
17 questions in your mind. Okay?

18 (Video played but not transcribed)

19 MR. ENGDAHL: All right. So interesting video. You get
20 the point. So last thing I wanted to talk to you about is
21 specifically for here in Arizona. I know we're going through a
22 lot of change, okay? We're re-engineering how we do business
23 here in Arizona because we've grown to a point where if we keep
24 doing it the same old way, we can't scale. We can't do what we
25 need to do to service the customer.

1 You know, Shamrock started in 1922. Our first delivery
2 truck was a horse-drawn wagon. You know, what if we hadn't
3 changed our delivery methods over the years to get to where we
4 are now? If we stayed on horse-drawn wagons, we probably
5 wouldn't be where we are today, right? So we continually have
6 to change so we can scale and grow. Okay?

7 So this change of moving receiving to 24 hours a day is so
8 we can get more stuff in in a more efficient way. Is it -- is
9 it what we all wanted to do? Maybe not, right? But is it what
10 we need to do to continue to scale the business and service the
11 customers, and you know, do all those things that we need to do
12 to protect Shamrock for all of us and our family? Absolutely,
13 it is. And, you know, we'd love to be able to keep the stuff
14 the same as it's always been, but where would we be if we were
15 still delivering in horse-drawn wagons?

16 Now things have to change so we try to do it the best we
17 can. We try to take input. I encourage input. I encourage
18 you to talk to your supervisors, managers. You know, talk to
19 me, talk to Kent, talk to Randy, whoever. You know, talk. We
20 can -- we can always talk about things. We can always tweak
21 things. We can work to make things better, right? And that's
22 what we want to do.

23 So at that point what I'll do is I'll open it up for a few
24 questions if anybody has any. Dead silence. Yeah.

25 UNIDENTIFIED MALE: If once Shamrock's crew is switching

1 to the union, would that mean all Shamrock crews would have to
2 join a union?

3 MR. ENGDAHL: Great question. The answer is no. Yeah.
4 It's by bargaining unit. And for example, you know the
5 bargaining units generally are a group of, you know, the
6 warehouse or the drivers. Are generally speaking what they
7 are. Okay? So drivers could be unionized and warehouse could
8 be non-union. That happens all the time. Other questions?

9 UNIDENTIFIED MALE: Why our competitors' union?

10 MR. ENGDAHL: That's a good question too. A lot of it
11 goes way, way back years, okay? They have been union for a
12 long time. And once you vote a union in, it takes 50 percent
13 plus one to vote a union in. To decertify a union or vote it
14 out, it takes 70 percent plus one. So it's very hard once it
15 gets in to get it out. The deck is stacked that way.

16 So I'm going to say two answers. Number 1, it's hard to
17 vote it out once you got it. Number 2, there was probably
18 things going on there that caused people to be so unhappy that
19 they voted it in. Okay? I don't know what those things would
20 have been, but our goal here in our family is to try our best
21 to keep everybody as happy as we can, right, and to work
22 together the best we can.

23 There again, you know, the majority of our competitors are
24 nonunion. Like I said only 7.5 percent of the nongovernmental
25 workforce in the United States is union, only 7.5 percent.

1 Cisco and union -- or Cisco and US -- and this is just my
2 personal opinion, okay? They kind of use that to keep the
3 wages down because everybody's paid the same then. They're --
4 they don't do well with incentives.

5 The people who excel, you know, people who show up to work
6 that get their PSA, you know, they don't have those things
7 there like we do. So, you know, it -- you can negotiate a
8 contract for five years. And you know budgeting wise what
9 you're going to pay. And you're not going to pay more than
10 that, right? So to me it's a lazy, lazy person's way of
11 running a business honestly. But that's just my personal
12 opinion.

13 What other questions?

14 UNIDENTIFIED MALE: Oh, from --

15 MR. ENGDAHL: Oh, sorry.

16 UNIDENTIFIED MALE: I kind of walked in a few minutes
17 late. What's all -- as far as this meeting, what's the purpose
18 of it?

19 MR. ENGDAHL: The purpose of this meeting is to educate
20 people as to what unions are, how they operate, and give
21 everybody knowledge and power to make good decisions.

22 UNIDENTIFIED MALE: I mean it seems like just the video
23 alone is more like an anti-union propaganda. So I really don't
24 know anything about unions. But I mean if you want us to know,
25 you say we use the term "family" and making certain that

1 certain communication lines are open and stuff like that, why
2 wouldn't you provide us with, you know, like some type of, you
3 know, documentation that we can read or something like that if
4 we don't know anything about it.

5 MR. ENGDAHL: Well, you probably missed the part. One of
6 the things I opened up with is, I encourage everybody to jump
7 on the Internet and do the research. There's tons of stuff out
8 there pro-union and there's tons of stuff out there anti-union.
9 But I encourage everybody to get the facts.

10 Don't believe what I'm telling you. Don't believe what
11 the video told you. Trust but verify. Go out there and do
12 your research. Get your facts because I know what you'll see.
13 You know, I know -- I know what you'll see out there if you do
14 your research.

15 Yeah. And I'm -- don't get me wrong. I'm not banging on
16 unions. If that's the right thing for certain places, more
17 power to them. That's fine. I just don't think it's the right
18 thing for us here at Shamrock.

19 UNIDENTIFIED MALE: (Indiscernible). They said that we
20 (indiscernible) and a couple people didn't even sign it. Are
21 those people (indiscernible).

22 MR. ENGDAHL: Okay. Let me make sure I have it. I think
23 the question was if --

24 UNIDENTIFIED MALE: You say if somebody else didn't sign
25 it, are they --

1 MR. ENGDAHL: Oh.

2 UNIDENTIFIED MALE: -- obligated to join the union --

3 MR. ENGDAHL: Okay. That's a great question. So if you
4 didn't sign a card, are you obligated to join. Here's the good
5 news. Arizona is a right-to-work state. So even if, God
6 forbid, a union got voted in here, in a right-to-work state,
7 you are not obligated to join the union. Okay? You do not
8 have to join it. All of the other states that we operate in
9 are not right-to-work states. So if they voted a union in, for
10 example in California, everybody in the whole place would be
11 obligated. But that's a great question, and I'm glad you asked
12 it. Arizona is right to work, you don't have to join a union,
13 okay? What else?

14 UNIDENTIFIED MALE: So what does that hypothetically mean
15 if a union was here, what does that do for the company
16 financially?

17 MR. ENGDAHL: You know, it really doesn't do anything
18 other than, you know -- if you were to negotiate a contract,
19 you would know what the wages were going to be, and you'd know
20 what you're willing to offer for benefits and so forth and so
21 on. The biggest negative from my point of view would be the
22 fact that, you know, where you and I can talk, if we have a
23 third party in between us, then that makes it difficult, you
24 know. I have to go to a third party and tell them what I want
25 them to tell you. And I'm not exactly sure how that translated

1 through them to you.

2 And then you tell them, here's what I want you to tell
3 Mark. And then you never know for sure how that translated
4 back to me. It just kind of makes it more difficult --

5 UNIDENTIFIED MALE: Kind of like management.

6 MR. ENGDAHL: -- to communicate and work through stuff, if
7 that makes sense.

8 UNIDENTIFIED MALE: The main thing is that happens now as
9 well. I mean I've had -- I've had issues before. And
10 sometimes, you know -- I mean Jerry's communicated things with
11 me --

12 MR. ENGDAHL: Yeah.

13 UNIDENTIFIED MALE: -- and gotten stuff settled. So I
14 know there's been times when stuff hasn't gotten settled. So
15 what's to determine that, you know.

16 MR. ENGDAHL: Yeah. And that's another point that you
17 might have missed is, you know, we're going to try our best and
18 get everything right. Are we going to do it all the time? No.
19 I'd be sitting here lying to you if I told you everything was
20 going to be perfect. It's not going to always be perfect, but
21 we're going to do our darndest to make it the best that we can
22 do.

23 You know, we want you all not to dread having to work.
24 You know, we want work to be something that you do, and it's at
25 least, you know, not a chore, right? We're -- I don't think

1 any one of us in here are working because we just love the heck
2 out of it. We're working because we want to make wages, and we
3 want to make benefits to take care of ourselves and our
4 families. That's why we work. Heck, if we were all
5 independently wealthy, I wouldn't be working. I've got a lot
6 of things that I'd rather be doing, right, fishing, hunting,
7 whatever.

8 But we got to make it as pleasant as we can while we're
9 here. That's the whole point of it, right? What else? I saw
10 a hand way back there.

11 UNIDENTIFIED MALE: Yeah. I just have a question. I know
12 that we're opening up a new warehouse in Eastvale.

13 MR. ENGDAHL: Yes.

14 UNIDENTIFIED MALE: Why was the union knocking on the
15 door? Were they threatened by us because we're opening up a
16 new facility?

17 MR. ENGDAHL: Great question. Two reasons. Number 1,
18 remember, they grow their business -- the folks that run the
19 union grow their business by adding more headcount, more dues,
20 right? So right now they're shrinking. So their wages and
21 benefits are in trouble now, you know, the people that run the
22 unions because their profits are going down. Okay? So that's
23 one reason. They grow their business by adding more people.

24 The second reason is we opened up our business in southern
25 California and we took away a bunch of union jobs because our

1 two biggest competitors, not all the places but some of the
2 places, are union. And particularly in southern California,
3 those places where we took those customers from them are union,
4 and they lost jobs. So they're trying to get those, you know,
5 dues back in because, you know, how are they are going to pay
6 their salaries as the union management if they don't have the
7 dues. It's a business, you know.

8 Money in, money out. If you haven't got the money coming
9 in, you can't pay it out.

10 Yes.

11 UNIDENTIFIED MALE: The way I see it, like the union, like
12 they lied to us. They're trying to find a solution. You said
13 (indiscernible) talked about. And I've been working seven
14 years, and I know that a long time -- a lot of times they don't
15 (indiscernible) what it seems like. And (indiscernible). And
16 I never came back. So maybe the union is lying about the
17 solution. You give us a solution by seven years and nothing
18 happens, nobody talk to us. And nobody do nothing. Maybe
19 (indiscernible). I seen a lot of guys out here
20 (indiscernible). You guys promise a lot of things.
21 (Indiscernible) we've been hearing, but it doesn't -- never
22 happens.

23 MR. ENGDAHL: Okay. Okay. And obviously I need specifics
24 to deal with there. But there again let me reemphasize for
25 everybody. We have an open-door policy at Shamrock. If

1 there's something that's bothering you that's not getting
2 resolved, I encourage you. Take it up the chain of command.
3 Talk to your supervisor. Talk to their manager. Talk to
4 Jerry. Go to HR. Go to Bob B. Go to me. Go to whoever.

5 And finally if you need to, take it to Ken or Norman
6 McClelland. They will meet with you. Every week I see
7 associates in talking with Norman. That is your avenue to
8 escalate stuff if you're not happy with it. Now are they
9 always going to tell you yes, I can do that for you? No.
10 They're not going to. But we at least owe everyone an
11 explanation of why, right?

12 UNIDENTIFIED MALE: Yeah.

13 MR. ENGDAHL: Okay? So that's here. That's active. It
14 happens. I see it. I see associates going to talk to Kent and
15 Norman every week. It happens. And they want to do that
16 because they truly care. This is their passion, is our family
17 here at Shamrock Foods. Both of those guys take nothing out of
18 this business other than their salary, their wages. They --

19 You know most entrepreneurs, if they had a business of
20 this size, they'd be taking millions of bucks out and enjoying
21 the heck out of themselves. These guys don't do that. They
22 take their salary and wages just like we do. They have the
23 same benefits that we've got. And their passion is to do it
24 the American way and provide a great place for everyone in our
25 family to work, you know. They're not interested in selling

1 this place, you know. They want to continue on for a fourth
2 and a fifth generation of their family for all of our families.

3 And, you know, there's a lot of people who -- fathers and
4 sons that work here, you know. That's what their vision is.
5 That's what their passion is. And that's what they love doing.
6 I mean Norman is 86 years old, and the guy still comes in the
7 office every day. He doesn't need to. He's got more money
8 than I've ever wanted to think about. He doesn't care about
9 that. He cares about taking care of his family business.
10 That's what he's all about. And he's got a lot of passion
11 behind it.

12 UNIDENTIFIED MALE: You know you sit there and say that
13 they only take the salaries, but there's a lot of money that
14 this company makes that they're reinvesting in other things
15 that's bringing in tons of money, like you're saying.

16 MR. ENGDAHL: Yeah.

17 UNIDENTIFIED MALE: He has plenty of money so I mean
18 they're still making a lot of money off they're making off of
19 something else.

20 MR. ENGDAHL: Absolutely, absolutely. Yeah. You know,
21 they're ploughing everything back into this company, you know.
22 We just -- in fact today I think it will be recorded. We just
23 purchased a new warehouse in Gresham, Oregon, you know. We're
24 opening our warehouse in Sacramento. We've got our warehouse
25 in southern California in Eastvale. So they're reinvesting in

1 this company. And as we start to get our profit sharing off
2 the ground, and there's going to be meeting this year again, I
3 think in April, about profit sharing and how the company did
4 this last year. Every person in this company shares equally in
5 a share of profit sharing. And every year since we've started
6 it, it's grown. And it's going to be bigger again this year,
7 and it keeps growing. And that goes into every one of our
8 401(k)s. Okay?

9 I get the same contribution that you get, that Norman
10 gets, that, you know, anybody else gets. So, you know, they're
11 sharing the wealth with us, you know. There's a lot of us so
12 that probably gets divided up a lot, but you keep putting it in
13 there every year. And you're going to have something by the
14 time you retire. That's what it's about.

15 What else?

16 UNIDENTIFIED MALE: You think they would sell if a union
17 get in?

18 MR. ENGDAHL: I -- you know, I can't really comment on
19 that because that's not legal for me to comment on. But, you
20 know, I can tell you that Kent and Norman have no plans
21 whatsoever to sell. Okay? Oh, sorry.

22 UNIDENTIFIED MALE: You know what that gentleman said back
23 there about certain instances? I know like, for instance,
24 we've asked -- as far as loading we've asked for pallet jacks.

25 UNIDENTIFIED MALE: Pallet jacks.

1 UNIDENTIFIED MALE: I mean I've been here five years.
2 We've asked for pallet jacks every meeting. I haven't seen any
3 of the pallet -- other than double jacks with the lumbers --

4 UNIDENTIFIED MALE: Yeah.

5 UNIDENTIFIED MALE: -- which really isn't -- third-party,
6 outside or off-site help that this does (indiscernible), you
7 know, create an amount of pallets.

8 UNIDENTIFIED MALE: We do need them.

9 UNIDENTIFIED MALE: And I mean -- I mean it's -- what
10 happens is it's a compounding problem because we if don't have
11 enough pallet jacks, and we got guys waiting around, that
12 system is already running. But what's going to happen when
13 that system starts going, you don't have all your product
14 loading or anything moving --

15 UNIDENTIFIED MALE: Bad loads.

16 UNIDENTIFIED MALE: You're going to --

17 UNIDENTIFIED MALE: Customers getting mad.

18 UNIDENTIFIED MALE: Bad loads.

19 UNIDENTIFIED MALE: -- start getting damages. You start
20 getting product backed up. You going to start, you know,
21 delaying, you know, the system. I mean these are just, you
22 know, something very, very simple that, you know -- that we've
23 asked for, and, you know, our supervisor told us that, you
24 know, well, they forgot to put it in the budget. Well, I
25 mean --

1 MR. ENGDAHL: Okay. Well, so --

2 UNIDENTIFIED MALE: -- I used --

3 MR. ENGDAHL: -- perfect example, okay. I'm hoping you
4 guys heard in the back. We don't have enough good power jacks
5 for the loader. This is a perfect example, and I'm glad you
6 brought it up because here's what I encourage you to do. You
7 know, you bring it up. You bring it to Jerry. If you don't
8 get the answer you like from Jerry, then you can keep going up
9 and up.

10 Finally if we get to Kent or Norman McClelland, damn we
11 forgot to put it in the budget, well, you know, that's probably
12 not going to happen. You know hopefully at some point you're
13 going to get an answer you're satisfied with. And I would
14 encourage everyone in this room to keep escalating and stuff if
15 you're getting answers that you're not satisfied with. Right?

16 That's how the process works. And the squeaky wheel gets
17 the grease, guys and gals.

18 UNIDENTIFIED MALE: I mean it was -- it was resolved for a
19 minute. And then, you know since (indiscernible) I have
20 (indiscernible) like these rentals I think.

21 MR. ENGDAHL: Yeah.

22 UNIDENTIFIED MALE: For a short period of time. But I
23 mean the amount of time that we had those rentals, I'm almost
24 certain they probably could have bought at least two brand new
25 ones.

1 MR. ENGDAHL: Maybe so.

2 UNIDENTIFIED MALE: You know what I mean?

3 MR. ENGDAHL: Yeah.

4 UNIDENTIFIED MALE: Because I mean they were probably
5 good, you know --

6 UNIDENTIFIED MALE: (Indiscernible).

7 UNIDENTIFIED MALE: When I say pallet jack, that's going
8 down the chain. That's affecting the load, affecting the
9 customer.

10 MR. ENGDAHL: Absolutely.

11 UNIDENTIFIED MALE: Just putting money out there.

12 MR. ENGDAHL: I'm with you. We owe you guys the right
13 tools to do your job. Absolutely. That's just common sense.

14 UNIDENTIFIED MALE: I also have one more thing too.

15 MR. ENGDAHL: Yes.

16 UNIDENTIFIED MALE: Summer's coming up here in a few
17 months as far as our summer, like when we break. Last summer
18 we did a different type of schedule where we laid -- you know
19 we laid off or, you know, put some people somewhere else, 32
20 guys -- fathers, two weeks before Father's Day --

21 MR. ENGDAHL: Yeah.

22 UNIDENTIFIED MALE: -- and, you know, I mean that's kind
23 of rough. But I know I started an all points. We had a
24 different process. I had brought it up before saying, you
25 know, where they can ask for volunteers who wanted like a week

1 off without off, a few days off without pay.

2 MR. ENGDAHL: Right.

3 UNIDENTIFIED MALE: A few days off without pay. That way
4 it kind of alleviated those guys that were --

5 MR. ENGDAHL: Yeah. So let --

6 UNIDENTIFIED MALE: -- willing to take off.

7 MR. ENGDAHL: Let me address that.

8 UNIDENTIFIED MALE: Okay.

9 MR. ENGDAHL: Okay? Because that particular issue -- did
10 you guys in the back hear what he said? When we had the
11 layoff, when it got into summer last year, we laid off several
12 people. Okay? That particular issue made it all the way to
13 Norman McClelland. And I'll just -- I'll tell you how it is.

14 I got my ass removed for that happening. That will never
15 happen again, okay? We will follow a different process this
16 year. We will ask people to take time off voluntarily. We
17 will do everything in our power not to lay people off. Okay?

18 Am I sitting here and telling you if we lost a huge
19 customer that we'd never have a layoff? I can't guarantee you
20 that. I can't make a guarantee, okay? But we will do
21 everything in our power to keep everyone here. That was not
22 what we should have done. Okay?

23 UNIDENTIFIED MALE: Well, I appreciate you saying that.
24 Not very many people would be -- hold themselves accountable
25 for that.

1 MR. ENGDAHL: No. I'll take the -- I'll take the blame
2 for that. And I can guarantee you I've had plenty of
3 conversations with the family about it. And we'll figure out a
4 different way this year. But I will be asking you to work with
5 us because, you know, whether we like it or not. Schools go
6 out of session, and we've got to figure out how we keep
7 ourselves busy, right?

8 UNIDENTIFIED MALE: Well, I can guarantee people will be
9 willing to take off weeks without pay.

10 MR. ENGDAHL: Yeah.

11 UNIDENTIFIED MALE: It's happened in the past.

12 UNIDENTIFIED MALE: And I know they will.

13 UNIDENTIFIED MALE: Yeah.

14 MR. ENGDAHL: And so we'll work through it.

15 UNIDENTIFIED MALE: What were the reasons for laying off
16 all those peoples off last year?

17 MR. ENGDAHL: Well, we -- you know, schools go out of
18 session. And if you look at the case graph, it drops like a
19 rock, you know, for that month or two in the summer. And so we
20 ended up with a lot more hours of work time than what we
21 needed. So --

22 MR. ENGDAHL: Can I address that too?

23 UNIDENTIFIED MALE: Yeah. Go ahead, Jerry.

24 JERRY: Part of the -- part of the reason what we've been
25 doing year after year is that when the business blow up like

1 crazy on January, February, March, April, what happens? What
2 do you see around here? You see 20, 30 new guys. All right?
3 And then we go through it and then (indiscernible) there's
4 attrition. Some people retire and leave, whatever. And the
5 bigger we're getting -- we saw last year.

6 We grew our business, a lot more cases. What happened is
7 we had to go out there. And we were hiring people all the way
8 up until the end of April. So then we get the load that we
9 got. And we had a lot of people. That's what it came down to.
10 We were very efficient. We were running great.

11 But then there wasn't enough work. And there wasn't
12 enough people taking off. And well, we tried to keep everybody
13 in. And we had meetings last year talking about, hey, we're
14 going to try to go with this crew through the summer and past
15 the -- past the fall until the schools come back. And some
16 people were getting 28 to 30 hours of work. And they couldn't
17 pay their bills so they brought it up to us, and they brought
18 it up to Mark and to everybody and to the family in corporate.
19 And they said, you know, we can't live like that.

20 And when we looked at the situation, we said we have too
21 many people. So that's when we had to lay off those people.
22 We found other work for half of them in the company, but it
23 wasn't as well paid as the regular job. So the plan this year
24 is that part of the -- part of the plan is what we're doing
25 with the -- with replenishing jobs, with the receiving open 24

5 So am I going to guarantee to you that that's going to be
6 perfect? Of course not. You know, we're going to miss, and
7 some days we're going to be working a lot of hours. But it
8 doesn't matter because someone told me many years ago. You
9 know don't build the church for Easter Sunday. And that's what
10 we were doing before. We were hiring all these people because
11 of the heavy season, and then we'd have to let them go. So we
12 don't want to do that.

17 MR. ENGDAHL: Got time for a couple more questions back
18 here.

AVTranz

1 And if you're -- and if you're for the truth, there's
2 nothing you can do against it. And that's just the -- what I
3 was going to say. And that (indiscernible) so if we're going
4 to be truthful and we're going to stand on it, then we'll
5 prevail no matter what so I'm not worried about it.

6 MR. ENGDAHL: Okay. Was there another hand back there?
7 You good? Okay. All right. One more question. Anybody? All
8 right.

9 UNIDENTIFIED MALE: The reason that we're here today is
10 (indiscernible) the union, right? And you only heard from a
11 few people. And there's a lot that's here that ain't seeing
12 it. (indiscernible) And I think it's very important that we
13 do say something because when you go to people who don't have
14 the authority to change anything, nothing will change.

15 But like you said. There's an open door policy. Take the
16 time and go talk to Hermano, close the door and talk to him.
17 You can't go by somebody else, what they're saying. Find out
18 yourself.

19 MR. ENGDAHL: But you know what? You know management has
20 heard me say this before. Not very many people either have the
21 confidence to go say something or maybe their English isn't
22 that great so they feel a little discomfort.

23 UNIDENTIFIED MALE: Uh-huh.

24 UNIDENTIFIED MALE: You know. Or maybe they just don't
25 have the right words to say. You know what I mean? So you

1 can't always put it on, they'll say something. You know what I
2 mean?

3 MR. ENGDAHL: Well --

4 UNIDENTIFIED MALE: A lot -- a lot of times people just,
5 you know --

6 UNIDENTIFIED MALE: Well, what I'm saying is because you
7 feel this way, I'm saying the next man don't have to feel that
8 way. I'm saying if I think this way, this person don't have to
9 think this way.

10 UNIDENTIFIED MALE: Oh, that's true.

11 UNIDENTIFIED MALE: And you know that -- and you know
12 what? If I want to know you and I go off of what he says
13 instead of what I'm going to do, I'm in trouble.

14 UNIDENTIFIED MALE: Like I say, you stand on your own two
15 feet or on somebody's stage.

16 UNIDENTIFIED MALE: So you know --

17 UNIDENTIFIED MALE: If you don't be your own man,
18 somebody's puppet so --

19 UNIDENTIFIED MALE: So talk.

20 JERRY: Nobody ever gets in trouble here for --

21 UNIDENTIFIED MALE: Well, hey.

22 JERRY: Nobody ever gets in trouble here for telling us
23 what we're doing wrong. Nobody ever gets in trouble for -- I
24 ask for his permission to use him as an example --

25 UNIDENTIFIED MALE: Yeah, Sanchez.

1 JERRY: -- for speaking up for giving us their opinion or
2 for pointing out something that we're doing wrong because we
3 get that all the time. You know why? Because it's a billion
4 dollar business, and we are human. You know, we make mistakes.
5 And I've made a lot of them so I've always tried to hire people
6 around me that are smart and they have the good intentions to
7 make the right decisions and do the right things. But, you
8 know, we all make mistakes. So --

9 But we always have the open-door policy. And you always
10 should feel okay with coming in and talking to any one of us.
11 And like Mark says. Sometimes when I tell you the right
12 things, sometimes we're going to tell you, no, and this is why.
13 And you might not agree with it, but, you know, that's what it
14 is.

15 MR. ENGDAHL: Sir.

16 UNIDENTIFIED MALE: We got laid off -- people got laid
17 off?

18 MR. ENGDAHL: Yeah.

19 UNIDENTIFIED MALE: Well, management told us
20 (indiscernible).

21 UNIDENTIFIED MALE: Yeah. Well, I don't know if I'd put
22 it in that way. You know, we talked about that. We made some
23 mistakes last year. We're not going to let that happen again.
24 (indiscernible) how to or what (indiscernible) with everybody
25 else, right? (Indiscernible). The good news is, I think

1 everybody that got laid off last year got reoffered a job. And
2 I think they're all back here. But a couple of them, you know,
3 either got a different job or something. So we'll deal with
4 that (indiscernible). All right. One more and then we got to
5 get to (indiscernible).

6 MR. ENGDAHL: Yes.

7 UNIDENTIFIED MALE: I can't hear him.

8 UNIDENTIFIED MALE: (Indiscernible) pulled from pool chips
9 or are you going to (indiscernible).

10 MR. ENGDAHL: Oh, this year my commitment is, we don't
11 want to do any layoffs. But what we will do is ask people who
12 can afford to voluntarily take some time off. And we'll ask
13 everybody that, okay? But you don't have to. It's just
14 voluntary.

15 Well, no, we're done. We're done. All right. Thank you,
16 everybody. I appreciate everything you do.
17 (Recording concludes)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: September 8, 2015

Cynthia R. Charles
AVTranz, Inc.
845 North 3rd Avenue
Phoenix, AZ 85013

FORM NLRB-5168
(2-08)Case 28-CA-150157
Thomas Lee Wallace affidavit

~~Charge Name~~
Shamrock Foods - TW
Confidential Witness Affidavit

I, Thomas Lee Wallace, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 14967 N. 137th Lane, Surprise, AZ 85379.

My phone number 623-271-7530. My mobile number is 623-225-4369.

My e-mail address is, thomaswallace01@yahoo.com

I am represented by Michael Wizner, a Representative from Bakery, Confectionery, Tobacco Worker's and Grain Millers International Union, Local Union No. 232, AFL-CIO, CLC (Union) who I have agreed to have present for this interview.

I was employed by Shamrock Foods Company located at 2228 N. Black Canyon Highway, Phoenix, AZ 85009, telephone number 602-272-6721. I worked at the distribution center location of 2450 N. 29th Avenue, Phoenix, AZ 85009. The employer is engaged in the business of distribution of food and dairy products.

- 1 I was hired by the employer on 5/8/2008 as a warehouse loader which is still my current position.
- 2 My duties included loading trucks for route delivery, loading cases into trailers for route delivery,
- 3 cleaning docks and general duties as assigned. I worked 40 hours a week, working Sunday through
- 4 Wednesdays, and then on Fridays. I worked the day shift from 9:00 a.m. to 6:00 or 7:00 p.m. My pay
- 5 rate was \$26.00 per hour. I was eligible for overtime and averaged about 1-3 hours of overtime a week.
- 6 My immediate supervisor was Jake Myers, whose title was just supervisor. His supervisor is Armando

Page 1 of 13 TW Initials

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

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1 Gutierrez, whose title is Warehouse Supervisor. His supervisor is Ivan Viviao, whose title is the
2 Operations Manager. His supervisor is Jerry ???, whose title is the Plant Manager. His supervisor is
3 Randy McClanahan, whose title is Regional Manager. I do not know the name of Kellen's supervisor.
4 Bob Beake is the Vice-President of Human Resources and James Allen is also a Human Resource
5 officer, both individuals were present during my termination. I do not have any employees that I
6 supervise or responsibly direct. I had one prior discipline in my file which included a written warning
7 for attendance issued in November 2014, but I believe has fallen off. I was terminated on 4/6/15, for
8 being disrespectful when I asked open questions during a town hall meeting conducted by the employer
9 on 3/31/15.

10 Sometime around January or February 2015, the employer began having town hall meetings with
11 its warehouse employees, about 200 employees with anti-union videos shown. The town hall meetings
12 are held at the employer's warehouse facility on the east side of the building in the auditorium. Usually
13 the town hall meetings are conducted by Mark Endenthall, whose title I do not know. The first townhall
14 meeting conducted around the end of January 2015, present for the employer, were Gutierrez, Viviao,
15 Endenthall. Endenthall showed an anti-union video to all the employees present, which lasted about 10
16 minutes. Present for the employees were myself, Dejuan Williams (loader), Dale Boatlidge (loader),
17 Jose Soto (loader), Steve Phips (loader), and so many others whose names I cannot recall. With regard
18 to the anti-union video, I recall the video showed company settings where union members were
19 harassing non-union members to sign union cards and showed unions calling people and threatening
20 them that if they didn't sign cards they wouldn't have jobs. At the end of the video Endenthall got up on
21 the stage, and also walked around, and asked those attending if they had any questions. I raised my hand
22 and asked Endenthall why our competitors union and we were not. He said, he didn't know why, but
23 believed it was a financial issue with companies. About four or five other employees, whose names I

1 did not know, also raised their hands and asked questions and I do not recall what they were or what
2 Endenthall answered. This meeting lasted about an hour. All of us employees went back to our work
3 areas and we discussed while we were working about how the video made it look like the employer was
4 afraid of a union coming in.

5 Then later that day my supervisor, Jake Myers, came to my work area loading door, between
6 12:00 p.m. and 1:00 p.m. No one else was present. Myers asked me so what did I think about the union.
7 I told him hey, I didn't know about the union as I was going to do my research. I said from the people
8 that I had talked to like my Dad and my neighbor and a Cisco driver that they all said the benefits are
9 better and the union is better for the people. Myers shook his head and said yeah, looking like he agreed
10 with me.

11 Then on a date I cannot recall, Steve Phips told me to look out for what I said around Warehouse
12 Captains, our foremen/lead, employees, as they were looking for people that are involved in the union or
13 talking about the union. He said he just wanted to warn me about talking to Art Manning or any
14 supervisors about the union and to watch my butt.

15 I first knew about the Union organizing campaign about the first of February 2015 after the
16 employer showed the anti-union video. Since that time I was told by union representative Wizner that
17 the union began its organizing campaign around November 2014.

18 Then on a date I cannot recall, one of my co-workers, Miguel Lopez, told me and Jose Soto
19 while we all were in the parking lot, that some of the employees were thinking about getting a union in
20 at work. Lopez said that some other co-workers were going to meet at the office to talk about union
21 organizing. He didn't tell me what he meant by the office and I didn't get clarification. I do know that
22 all of us employees have been complaining for a while about how the employer deducts from employee
23 paychecks any damages the employer asserts employees cause to products being loaded. The employer

1 also charges employees for shorts, meaning if a case has 100 cans that are supposed to be in the box, and
2 once the product is delivered and there are only 95 cans in the case, loading employees are charged for
3 the difference. With regard to damage, if I load a \$30 pound bag of flour into a truck and the bag
4 breaks, the employer deducts the destruction of the product from my next paycheck and charges me \$60.
5 I have had weeks where I had no knowledge of having caused any damage, yet found deductions in my
6 paycheck for alleged damage. What happens is that after a driver delivers the product and returns to the
7 dock, and he asserted that he could not deliver certain products because they were crushed or otherwise
8 damaged, then that product is coded into a computer system as a returned stock, and then is somehow
9 reported to supervisors and loading employees are charged. Drivers are not charged for any damages.
10 Then the employer also charges shorts and damages inconsistently. For example if a supervisor has a
11 favored employee who showed the supervisor that a deduction for damage or short was made on their
12 paycheck, and complains to the supervisor that they didn't cause the damage, the supervisor removes the
13 deduction and the employee is reimbursed the damage cost in their next paycheck. Those favored
14 employees are usually, Able Lemus, Victor Gonzales, Richard Sanchez and ??? Luna. These employees
15 never complain about anything at work. I have been told by Julian Magliano and Richard Sanchez, that
16 these three employees also have also told them that they will not sign union representation cards.

17 After February 1, 2015, I heard a lot of chatter from my co-workers about getting a union in and
18 then Miguel Lopez told me there was a union meeting being held after work at Denny's restaurant,
19 located on I-17 and Thomas Road around 2/3/15, at 6:00 p.m. I am not certain of the date. I attended
20 this meeting arriving around 6:30 p.m or 7:00 p.m. Present at this meeting for the Union were Michael
21 Wizner, the Union Business Agent, and Eric Anderson. Present for employees were myself Joel
22 Rodriguez, Steve Phips, and another employee whose name I do not know. We all discussed the union
23 organizing campaign, the process and how it worked. I signed a union representation card as did Joel

1 and the other employee whose name I don't know. I didn't see Steve sign a card. At that time I agreed
2 to be part of the campaign. I did not get any cards to hand out to employees. I then went home and did
3 internet research on organizing and found out what I could and could not do and found out it was
4 unlawful for the employer to ask employees about their union sentiments. This meeting lasted about 45-
5 60 minutes. I left around 7:30 p.m. I was pulling away from the restaurant in my car and saw Art
6 Manning's red-truck. Manning is the Warehouse Captain. As a warehouse captain has authority to give
7 employees instruction as to when employees take breaks, how to complete job duties, let's us know
8 when we can leave at the end of shift, tells us what to clean on the docks. He has the owner's phone
9 numbers in his cell phone because he showed me those phone numbers. Manning reports directly to
10 Jake. As I pulled out I called Miguel Lopez and asked if he was going to Denny's. He said he just
11 arrived at Denny's and was in the parking lot and saw Art's truck in the parking lot and saw Art go in,
12 so wasn't going into Denny's with Art there. Miguel said he was not going in because he was afraid Art
13 would say something to upper management.

14 The next day I went back to work and during break, while in the break room area located
15 downstairs, several employees and myself began talking about the union coming in and if the employer
16 was going to find out about it or not. Miguel and some of the other employees said they were spooked
17 about seeing Art at Denny's so we all were careful to keep our talk very low and we kept ourselves
18 separate from other employees we knew were pro-employer. There is an Employer camera placed at the
19 entrance into the break room. I don't know if it's audio and visual. I only know it has video, because I
20 have seen the video feed in the control room which shows a camera that is pointed to the entrance of the
21 break room, and of course the control room shows points at several locations throughout the building.
22 No one said anything about wanting to stop organizing though.

1 Then around mid-February the employer began holding meetings with groups of ten employees.
2 I was called into one of these groups in mid-February 2015, from 8:00 a.m. to 9:00 a.m. held in a
3 conference room near Viviao's office area on the second floor in the middle of the plant. Present for
4 management Viviao and Natalie ?? an HR manager. Present for employees were myself, Harvey (a
5 merge operator), Miguel Portillo (order selector), and seven others who I believe were mostly order
6 selectors whose names I do not know. Viviao told us that we were having this meeting because he
7 wanted to know about any employee issues that were going on that we wanted to discuss. He said that
8 this would help the supervisors know better what was going on and how to handle the issue. Viviao then
9 played an anti-union video which lasted about 10 minutes. This video showed employees standing up
10 saying we don't want the union in our workforce; employees wearing anti-union shirts and holding
11 picket signs against with language that was against having a union. After the video ended Natalie told
12 us that our she had benchmarked our pay and medical against other food industries and our pay with
13 medical was more compensation than with other companies. Viviao told us that when we joined a union
14 that we would have to pay association fees, union dues, and that our pay would go down and we would
15 not be making the same pay as we made now. Natalie said after we joined a union that any issues or
16 complaints we had about our workload that we wouldn't be able to come to them for help and would
17 have to go through the union. Portillo said then what were they going to do for us because when people
18 came to them with issues, they didn't do anything about it. Viviao jumped in and said they were going
19 to handle the issues and that they were putting the supervisors into weekend training courses on
20 Saturdays to get them trained to better handle the employee issues. I then asked if there was any way the
21 employer could take off the shorts and damages from our paychecks. I told Viviao that I didn't think it
22 was fair for us to get charged for a product that was damaged on a truck and we didn't have any
23 evidence that we caused the damage. Viviao said as of right now they were looking into it and if we had

1 any issues with our pay sheets to see our supervisors or Armando Gutierrez to see if they can correct the
2 errors or look into them. A few of the other employees also asked questions and raised issues that dealt
3 high rise pickers, but I cannot recall what they said. I do recall Viviao and Natalie said they were
4 looking into the order pickers issues, and said something like he was aware of those issues, and they
5 were looking into it. Gutierrez then knocked at the door telling the supervisors that the next group was
6 ready to enter the room and that the meeting was concluded. I left the room and saw another group of
7 ten employees entering the room, and saw that Gutierrez go in the room with them. I went back to
8 work. As I noted, I was the only loader in the group so walked back to my work area by myself. I do not
9 know if the employer required all warehouse employees to take part in the group of ten meetings.

10 Around the last week of February 2015, Viviao held a loader meeting with Myers, Manning and
11 I think Gutierrez was also present but I am not certain. Present for the employees were myself, Jose
12 Soto, Miguel Lopez, Dale Boatlidge, Darnell Broom, Richard Sanchez, Able Lemus, ?? Luna, Victor
13 Gonzales, Chris Tyson, and about eight other employees whose names I cannot recall. Viviao told us
14 that here is the deal , the employer is going to hire temps and use them until Mother's Day then when the
15 business slows we are going to let them go, and hire them back in August 2015. Here's the deal, you
16 cannot tell them what you make because we are paying these guys \$14.00 per hour, because once they
17 find out what you guys make they are going to leave, once they realize you guys get paid more.

18 Then around March 2, 2015, I asked Magliano if he could get me a couple of the union
19 representation cards for my Father-in-law and Brother-in-law who worked at the plant. I had called him
20 on my cell phone after work hours to ask him this. A few days later around March 5th or 6th, in the
21 parking lot during lunch break Magliano gave me two union cards to give to my Father-in-law and
22 Brother-in-law. No one else was present. The employer has video cameras in the parking lot on every
23 other row on top of the lighting. Magliano entered into my car and placed the cards in my glove box so

1 no one could see him handing me cards. We then drove off together to go to lunch. A few days later, I
2 then went to the house of my Father-in-law, and got him to sign a card. I saw my Father-in-law sign the
3 card. A few days later on my way home from work, I stopped at my Brother-in-law's home and saw
4 him sign the card. I kept both signed cards in my glove box for a couple of weeks. Around 3/9/15 or
5 3/10/15, in the warehouse break room, during lunch time, I then told Magliano that I got the two cards
6 signed. No one heard me tell him that, and I only said to him that I had his stuff for him. To my
7 knowledge the employer did not know which employees were involved with getting the union in or
8 getting cards signed because all of us employees who were part of the organizing campaign did our best
9 to be covert.

10 With regard to the second town hall meeting the employer conducted on 3/31/15, at the
11 auditorium with about 200 employees present, present for the employer were Gutierrez, Viviao, Bob
12 Beake, Cindy ?? whose title was HR Benefits, and my supervisor Myers was there but left early. Beake
13 conducted this meeting. Present for employees were myself, Steve Phips, and the other employees listed
14 above as attending the first town hall meeting. *[I provide a copy of the recording] -TW* Phips recorded this meeting on a digital recorder. Beake
15 showed us a chart about the growth of the company and told us that the company made \$300 billion
16 dollars last year. He said that net growth was less than that and we had to remember that what the
17 employer got was pennies on the dollar. He then played a video with Kent McClellan, the
18 CEO/President and his father Norm McClellan, the retired CEO/President who gave a state of the
19 company presentation. They talked about growth and benefits generally and made no comments about
20 unions. This video lasted about 14 in total. After the video ended, Myers left the auditorium and Beake
21 spoke. Beake said that he wanted to thank everyone for their hard work and said that he was proud they
22 were still a privately-owned company. He then opened the floor to questions and answers. One
23 employee, who I do not know, raised their hand to ask a question but I cannot recall what it was. Next,

1 Richard Sanchez, a warehouse employee, asked Beake about the company's medical deductibles for the
2 HSA accounts for employees. Sanchez said that he went online and saw the deductible was \$6000. He
3 also asked about how to go about earning points that he had not received for his HSA spending account.
4 Cindy from HR answered his question about how to get the points for his HSA. I then raised my hand
5 and asked Beake if there was any way we could have our old insurance back. Some employees started
6 clapping and laughing and chattering in reaction to my question. Beake pulled back a bit at my question
7 then stated that at this time this is the company's health plan, the plan that we chose and the plan that we
8 are going forward with. I then asked if there was any way the company could contribute the full amount
9 into our HSA account (the plan we currently had with our HSA accounts, the Employer contributed to
10 with a monthly amount totally \$1500 for the year). I told him that I knew that some companies
11 contributed the full amount. Beake said then said again, this is the plan we have at Shamrock, let's be
12 honest, it's not the best. He said, is this the plan we are going to have forever? He didn't know that. But
13 this is the plan that Shamrock has for now. Beake did not appear to be upset about my questions at that
14 time. Richard Sanchez then asked another question about the insurance plan, but I cannot recall what he
15 asked or what Beake responded. No one else asked any questions. Beake then concluded the meeting
16 which lasted about an hour.

17 Then on 4/6/15, at work after I returned from lunch around 12:45 p.m. I went into Myer's office
18 and I asked Zack Whiteman, one of the Warehouse Captains, if I was getting three trucks today (to
19 load). He told me that Viviao was looking for me and I could go to his office. I went to Viviao's office. I
20 said okay and headed for Viviao's office and no one was there. I sat in Viviao's office for a few
21 moments and Viviao entered the room. Viviao told me Gutierrez was looking was looking for me. I
22 then left Viviao office and headed back to the dock to find Gutierrez, near my workstation. Gutierrez
23 told me to grab all my belongings and that I needed to go to HR. I gathered my lunchbox and coat and

1 Gutierrez escorted me to HR and on the way he asked me what I did? I said I didn't know, maybe it was
2 the question I asked in the meeting about our healthcare. He said he didn't know. When we entered the
3 HR office, James Allen from HR was sitting at the table along with Viviao. I asked what was going on.
4 Viviao said Senior Staff was offended by the question that I asked in the town hall meeting last week
5 regarding healthcare. He then said the decision came from Norm and Kent McClelland and senior staff;
6 they said I wouldn't be happy with the company health insurance and for me to find a company with
7 better health insurance. I then said, how can I get fired for asking a question when Bob Beake asked for
8 questions in the town hall meeting. Viviao said, Beake and senior staff had a meeting and decided that I
9 was disrespectful in the meeting and it was best that we part ways. I told Viviao that no way was I
10 disrespectful and that if Bob Beake was at this meeting I would say sorry for asking a question about our
11 healthcare. I then asked to speak to Randy McClanahan to see if there was something that could be
12 done. Viviao said this is the decision the senior staff has come to. Then Allen handed me a separation
13 packet that explained what I would be entitled to. This packet had written across it terminated on 4/6/15
14 but I did not receive any termination document. This separation packet offered me severance pay, but
15 then on line 3 said that I owed the company \$1048.00 because I had taken vacation the first week in
16 February 2015, (approved leave which I had already been paid for, scheduled a year out). It said if I
17 signed the severance agreement the employer would waive the \$1048. I said I was not signing anything
18 until I had a lawyer. I said to them were they sure they wanted to do this, as I had attorney's in my
19 family. .this was wrongful termination. .I was fired for asking a question in our town hall meeting. I
20 asked if I could have a copy showing why I was terminated. At the point I told Viviao this was bogus
21 and what do I do. I have five kids and a wife. I asked him if I should cash out my 401(k) or not. He said
22 just find another job and roll it over and definitely see someone about this. I then thanked Viviao for
23 everything he and Daniel did when they gave me a chance to come back to the warehouse. I then signed

1 the back page of the packet only recording that I received the packet, but no separation agreement was
2 made. I then left the facility and went home.

3 Since my termination I have e-mailed James Allen asking about my tuition reimbursement that I
4 had already submitted before I was terminated, around two weeks before, \$1000. Allen said they were
5 working on it and would get that back to me.

6 On April 8, 2015, Jose Soto called me and told me that Vivia had a meeting with the loader
7 employees and Viviao told the employees he felt bad that he was the one who had to let me go, and
8 explained that the reason the employer let me go was because I got into a heated argument with senior
9 staff after the town hall meeting. Viviao also explained that he told them that because the employer
10 didn't want employees to be afraid to speak up and ask questions after employer meetings. Soto told me
11 all the employees looked at each other at that point with no one speaking up or asking questions after
12 that. I did not get into any heated argument with senior staff after the town hall meeting, as I went right
13 back to work, which my swipe card information into my work area and the employer's camera will be
14 able to show.

15 With regard to the employer's solicitation policy, there is a sign on the front of the employer's
16 warehouse door that says no soliciting. The employer also has a no solicitation/no-distribution policy i
17 its employee handbook, pg. 65, which basically prohibits all non-work related solicitation or distribution
18 of leaflets or flyers or brochures during work time in work areas. I have provided a copy of the
19 Employee Handbook to the Board Agent. In practice when we employee's enter the work area, located
20 at the will-call desk, where customer's are picking up orders, the employer has a card which shows a
21 donation group, whose name I cannot recall, which says \$1.00 for candy, and when I donate a dollar, the
22 employees working the will-call area will bring out candy selections and I can pick out a pack of candy.
23 The will-call employees will respond to my donation during work time, even when I am on the clock. I,

1 myself, have donated ten dollars for ten packages of candy around February 26, 2015. The employer
2 has an Avanti marketplace mini-convenience store inside the break room where employees can purchase
3 food.

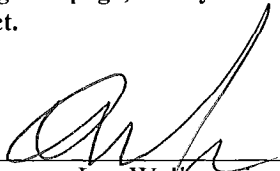
4 With regard to the employer discharging other employees for being disrespectful by asking
5 questions at town hall meetings, I know of no other employees who have been disciplined or discharged
6 as I was. Richard Sanchez had spoken up during the town hall meeting and he was not disciplined or
7 discharges. I also know that Richard Sanchez has applied to be a supervisor and was among the group of
8 favored employees I described above.

9 With regard to the employer's use of electronic messaging to employees the employer does not
10 have an intranet or electronic method is uses to communicate with its employee, but was in the process
11 of rolling out a Human Resource portal when I was discharged. Employees also have kiosks they can
12 use located in the break rooms where employees can access Ipay, for paystub information. If the
13 employer has announcements to make like announcing a town hall meeting the employer posts it near
14 time clocks and on boards on the walls.

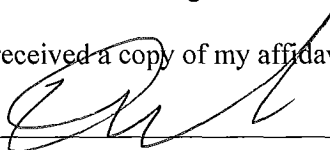

15 With regard to what languages employees speak and read at work, the majority speak and read
16 English.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 13 pages, including this page; I fully understand its contents and I certify under penalty of perjury that the foregoing is true and correct.


Thomas Lee Wallace signature
4-22-15
Date


I have received a copy of my affidavit.


Page 12 of 13  Initials

Thomas Lee Wallace signature

Date

Subscribed and Sworn to before me at
Phoenix, Arizona
this 22nd day of April 2015.

A handwritten signature in cursive script, appearing to read "Kathleen A. Mangas", is written over a horizontal line.

Kathleen A. Mangas
Board Agent
National Labor Relations Board

SHAMROCK FOODS COMPANY

28-CA-150157

MARCH 31, 2015 AUDIO RECORDING

AVTranz

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000107

1 UNIDENTIFIED MALE: Thank you.

2 MR. BEAKE: Okay. Well, that closes out what we wanted to
3 convey to you today, and we have a little bit of time, and we
4 could take -- and first of all, I want to recognize Cindy
5 Pimenthal and her team -- I think you all know Cindy back there
6 -- for the job she does, and -- but we'll take some questions
7 if you have any. Yes, sir.

8 UNIDENTIFIED MALE: I have a question about the medical.
9 I noticed when I -- because like -- because there's a couple
10 issues that I had. Number one, is I did my points last year,
11 and I didn't get my discount. I called and never got a
12 response, but I called a few times, so whatever.

13 Now, the new year comes, and I got a card again saying I
14 needed to do my biometric screening. I did it in February. I
15 entered my number, I took a picture of the screen on my -- my
16 uhc.com, and it said that I have my four points, but --

17 MS. PIMENTHAL: So let me address that. First of all, if
18 you didn't receive a response, I apologize. We just sent those
19 cards to everyone, so if there is a lag -- if you attended the
20 know your numbers screening, there is approximately a two week
21 lag as far as loading those points, so you may have received
22 it, and we'll try to communicate with everyone as quickly as
23 possible. You may have received a call even though you had
24 qualified recently.

25 So I encourage you to go online and look at the points to

1 see if you're qualified. And if you have a spouse, they may
2 need to qualify as well. So see me afterwards, and we can
3 discuss that.

4 UNIDENTIFIED MALE: Okay.

5 MS. PIMENTHAL: Okay.

6 UNIDENTIFIED MALE: Okay. And then -- and then is it --
7 is it true that the deductible went up to 8,000?

8 MS. PIMENTHAL: No.

9 UNIDENTIFIED MALE: Because I read something on line that
10 said
11 -- on the side bar of UHC, when I log in, it says 8,000 out-of-
12 pocket now.

13 MR. BEAKE: Well, that's not deductible. That's an out-
14 of-pocket maximum --

15 UNIDENTIFIED MALE: Okay.

16 MR. BEAKE: -- and 4,000 out-of-pocket maximum for an
17 individual.

18 UNIDENTIFIED MALE: Okay.

19 MR. BEAKE: The deductible did not change.

20 UNIDENTIFIED MALE: Okay. So after the 6,000, it goes to
21 80/20 and after 8,000, it goes to 100 percent, right?

22 MR. BEAKE: Yes.

23 UNIDENTIFIED MALE: Okay.

24 MS. PIMENTHAL: And so, after a 3,000 deductible for a
25 family, then it goes to 80/20 --

1 MR. BEAKE: Right.

2 MS. PIMENTHAL: -- to a maximum out-of-pocket of \$8,000,
3 and you have 100 percent coverage.

4 UNIDENTIFIED MALE: Oh, okay.

5 MS. PIMENTHAL: That's right.

6 MR. BEAKE: Any other questions?

7 MR. WALLACE: Yeah. Is there any way we can get our old
8 insurance back? Yeah, it -- gross \$300 million. I mean it's
9 through the roof. You haven't even considered anything.

10 MR. BEAKE: Well, okay. Let's talk about that as far as,
11 you know, sales revenue is not profits. So I think we've
12 always talked about how skinny the margins are in the food
13 service industry. It's pennies on a dollar that we make.

14 So, you know, we made this change on the healthcare
15 program, and we tried to do the best job we could explaining
16 why, because quite frankly not only Shamrock Foods, but other
17 companies, you couldn't afford that cost curve.

18 And so, we went to the high-deductible consumer driven
19 plan, HSA plan. We made a conscious decision to cover half the
20 deductible. And so, that's the plan that we are -- we're
21 trying to manage too.

22 Now, for me to say that there will never be a change in
23 the future, I couldn't say that, but this is the plan we're
24 living with today, all of us, and we have to manage that, and
25 it has -- you know, it has its benefits, and it has its

1 drawbacks. You know, let's all be honest about that. So
2 that's where I am at today.

3 MR. WALLACE: Is there any way you can contribute the full
4 3,000 or the full contribution, because some -- some companies
5 do that. I was just wondering.

6 MR. BEAKE: Well, that's not our plan today. I mean, I
7 can tell you that most companies don't -- you know, I don't
8 want to get into all the details of what other companies are
9 doing. Most companies don't contribute anything to the
10 deductible, but we do. I mean this is the plan we have today.

11 You know, obviously, it pleases a lot, it doesn't please
12 all. We continue to look at it, and work on it, and try to
13 manage, collectively, our healthcare costs as a company. I
14 mean you can see the expense of that. It was over \$23 million
15 in 2014. Yes.

16 UNIDENTIFIED FEMALE: What's your guys' open enrollment
17 for the wellness program.

18 MS. PIMENTHAL: For the wellness program?

19 UNIDENTIFIED FEMALE: Yeah.

20 MS. PIMENTHAL: The qualifying period is from October 1st
21 through April 30th.

22 UNIDENTIFIED FEMALE: Okay.

23 MS. PIMENTHAL: So you would be eligible for benefits by
24 April 1st.

25 UNIDENTIFIED FEMALE: Okay.

1 MR. BEAKE: Any other questions? Yes, sir.

2 UNIDENTIFIED MALE: In the HR portal, are we going to be
3 accessible to get, from our standpoint, as far as write-ups or
4 days that we have accumulated as far as --

5 MR. BEAKE: Attendance and stuff?

6 UNIDENTIFIED MALE: -- yeah, attendance.

7 UNIDENTIFIED MALE: I don't know about that.

8 MR. BEAKE: No, not in the initial phase. No.

9 UNIDENTIFIED MALE: As far as like our days off and stuff.

10 UNIDENTIFIED MALE: No that --

11 MR. BEAKE: Not in the initial phase.

12 UNIDENTIFIED MALE: That and the -- as far as the criteria
13 you meet as far as how many days you called in or whatever,
14 because sometimes it's -- it's weeks, if not almost months
15 before you get that information back and why wouldn't that be
16 accessible if it's a personal log in code for each individual
17 employee that they can see that.

18 MR. BEAKE: That's a good question. I'm not understanding
19 it takes weeks or months to find out your attendance.

20 UNIDENTIFIED MALE: Well, as far as how many points I have
21 accumulated, when they fall off, the anniversary dates --

22 MR. BEAKE: Oh, I see what you mean. Okay.

23 UNIDENTIFIED MALE: -- and that sort of thing.

24 MR. BEAKE: Well, it's not -- it's not designed in the
25 portal today. It doesn't mean it won't be in the future. It's

1 a good point, a good question, but it's not in there today.

2 MS. PIMENTHAL: So we have a phase implementation. This
3 is just the first --

4 UNIDENTIFIED MALE: Oh, the --

5 MS. PIMENTAL: -- stage of it. We're also in the process
6 of implementing a new time and attendance system. So once
7 that's fully implemented, there will be a link that you can
8 access your attendance, but at this point in time, it will not
9 be in the first initial phase. That will probably be, you
10 know, three to six months out before you can access that
11 information.

12 UNIDENTIFIED MALE: And what will that consist of? Is
13 that a hand scanning system?

14 MS. PIMENTHAL: It's through ADP. It's eTIME, time and
15 attendance. So you'll be able to view your -- basically, your
16 time off, your benefit time, vacation, and sick leave.

17 UNIDENTIFIED MALE: No, I mean as far as the clocking in
18 and clocking out. Will that be a hand scanning system or will
19 it be --

20 MS. PIMENTHAL: No, we're going to be installing the time
21 clock. So --

22 MR. BEAKE: It will be a type of a card -- card system.
23 Any other questions? Yes, sir.

24 UNIDENTIFIED MALE: The charts that you showed, in 2010,
25 there was a dip, right? 2009 was up here, and then 2010, and

1 then it started to go up. What happened in 2010? Why did that
2 dip occur?

3 MR. BEAKE: Are you talking about the sales or the
4 stock --

5 UNIDENTIFIED MALE: The sales.

6 MR. BEAKE: Sales. Remember now, we had to recession,
7 right. We all remember that. It hit Arizona pretty hard, so
8 that's the dip. And for those of you that were around in --
9 how many were here in 2000-2001? It was a pretty big dip too;
10 wasn't it? We had problems with the warehouse, but, you know,
11 the good news is that we recovered quickly from that, and we
12 kept on that and now it's accurate, but to answer your
13 question, it was the recession.

14 UNIDENTIFIED MALE: Yes, sir.

15 MR. BEAKE: Any other questions? Yes, sir.

16 UNIDENTIFIED MALE: Let me just touch on some of what Mr.
17 Wallace was saying. A lot of times what people don't
18 understand is the difference between like the private sector,
19 which is, you know, Shamrock and the public. You know, a lot
20 of people compare different warehousing systems, to something
21 like -- to like that of UPS and like that. I mean that's a
22 multi-billion dollar national corporation and that -- you know,
23 like my wife works for the medical field at a private company,
24 Hospice of the Valley. For a family of five there, it's 600
25 bucks a month. They do not contribute to an HSA account. They

1 don't have an HSA account.

2 So, although people might perceive Shamrock to not be as
3 good as it was, it is, you know, it's one of better ones,
4 because I've researched it.

5 MR. BEAKE: Thank you.

6 UNIDENTIFIED MALE: You know, and I just think that that's
7 what happens is that sometimes people don't understand the fact
8 that Shamrock, they see money, they see -- you know, like you
9 said, sales doesn't necessarily --

10 MR. BEAKE: Profits.

11 UNIDENTIFIED MALE: -- mean profits, so.

12 MR. BEAKE: Right. Well, I appreciate that comment, and
13 it's true. I mean we've hired -- you know, a lot of people
14 that have come -- and I don't want to stretch this out any
15 longer, but in -- with other companies who would -- had
16 testimonials about what it cost them for healthcare in their
17 companies.

18 Now granted, I know every dollar is critically important
19 to every person, right. We try as a company to do the very
20 best job we can to balance all that, understand what our
21 profits are, what we can spend, where, and what we can do for
22 all of our associates as it relates to the wellness, the health
23 benefits, the retirement plan and benefits. That's paramount
24 for Norman, and Kent, and the family, and for all of our
25 associates. It's very important. Trust me, I know it's not

1 perfect, it doesn't satisfy everybody, but we try and what is
2 right overall for everybody, and I appreciate your comment.

3 UNIDENTIFIED MALE: And is that emergency fund still in
4 place? I remember I asked about it.

5 UNIDENTIFIED MALE: I haven't even looked at it.

6 MR. BEAKE: It's still in place.

7 UNIDENTIFIED MALE: Okay. So like if somebody -- like a
8 family has an incident --

9 MR. BEAKE: Yeah, it's the process you go through. We
10 have the emergency fund. We have the fundraisers for that, you
11 know, once a quarter or something like that, and we've had a
12 lot of families enjoy the benefit of that emergency fund.
13 Okay. Guess what, we're out of time. Thank you very much.

14 (Recording concludes)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: August 27, 2015


AVTranz, Inc.
845 North 3rd Avenue
Phoenix, AZ 85013

Shamrock Foods Company**Confidential Witness Affidavit**

I, Mario Lerma, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 9200 W. Hollywood, Peoria, AZ 85345.

My mobile phone number is 623-414-2218.

My e-mail address is, justinalerma@yahoo.com

I am employed by Shamrock Foods Company located at 2228 N. Black Canyon Highway, Phoenix, AZ, 85009, telephone number 602-272-6721. I worked at the distribution center location of 2450 N. 29th Avenue, Phoenix, AZ 85009. The employer is engaged in the business of distribution of food and dairy products.

1 I was hired by the employer on 12/7/09 as a full-time general warehouse employee. Currently I
2 perform work as a forklift driver in the warehouse. My duties include replenishing stock and receiving
3 stock, and make sure products are put away. I work 45-50 hours a week, working Sunday through
4 Tuesday, and Thursdays. I have Wednesdays, and Saturdays off. I work the second shift from 2:00 p.m.
5 to 10:30 p.m. My average pay rate is \$25.78 per hour for the last eight weeks. My base rate is \$14.00
6 per hour, increased by time in service pay, safety pay, night differential and freezer differential pay,
7 when applicable and incentive pay based on the average number of tasks performed per hour. I am
8 eligible for overtime and average about 5-10 hours of overtime a week. My immediate supervisor is
9 Dave Garcia, whose title is Forklift supervisor. His supervisor is Jeff Vanderwalker, whose title is Night

Page 1 of 15 ML Initials

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

1 Warehouse Manager. His supervisor is Ivan Vaivao, whose title is the Operations Manager. His
2 supervisor is Jerry Kropman, whose title I think is the Plant Manager. His supervisor is Mark Engdahl,
3 whose title I think is Regional Warehouse manager. Randy McClanahan, whose title is Regional Sales
4 Manager, is also in that hierarchy but I am not sure where. I do not know who McClanahan's supervisor
5 is. Bob Beake is the Vice-President of Human Resources. Norman McClellan and Kent McClellan are
6 the owners. I do not have any employees that I supervise or responsibly direct. I have one verbal
7 warning that was issued to me around 10/1/14, but I had to sign the warning so it may be a written
8 warning. The warning was issued because I left work early to go to the hospital. I got approval to leave
9 but because I left within the first four hours of the shift, the absence was considered the equivalent of a
10 call-in.

11 With regard to the organizing campaign, sometime around December 2014, I was talking with
12 another employee, about some employees contacting unions to get a union in the warehouse. A lot of us
13 were upset with the employer because the employer had changed our shifts numerous times in the last
14 six months, giving us employees about a two week notice. For example my former shift I worked
15 Thursday, Fridays and had Saturdays off and I started at 1:00 p.m. Then I was switched to working on
16 Fridays starting at 4:00 p.m. with the employer taking away Thursdays. Currently I have ^{weeks} ~~Fridays~~ and ~~Saturdays~~ ^{MC}
17 Saturdays off again. We employees discussed how if there was a union in the warehouse with a
18 contract, that the employer couldn't just keep switching our shifts like that. We employees also
19 complained together about the employer adding a DSI deduction to our paychecks, levied against us for
20 lost inventory, short inventory, damaged inventory. We employees had no way of verifying the
21 employer's claim. In one case the employer had a customer complain that it never received its trays
22 (school trays). The employer couldn't find the trays and charged all employees on the DSI, (warehouse
23 forklift employees, Floor Captains, merge operators) which included me, \$2.00 an hour off our pay for

1 a week. I put in around 50 hours so I had about \$100 taken off my paycheck. Then a few days later the
2 employer found the misplaced trays sitting outside still in a trailer, so it never really lost the inventory.
3 So when I heard that some employees were talking to unions I told one of the employees that if there
4 was a meeting set up to let me know and I would attend. I heard that these employees had tried to
5 contact the Teamsters first but decided to go instead with the Bakery, Confectionery, Tobacco Workers,
6 and Grain Millers International Union, AFL-CIO (union)

7 I was invited to attend a union meeting on 1/2/15 at the union hall. Present for the union were
8 union representatives Michael Wizner, and Eric Anderson. I signed a sign-in sheet as did all attendees. I
9 have given the Board Agent the names of employees who attended. During this meeting I signed a
10 union card. I saw other employees sign union cards as well. We discussed how we could stop the
11 employer from docking our pay, changing our schedules, and trying to get the employer-paid pension
12 plan back. We decided at that time to have employees come to the hall to sign cards and not hand out
13 cards.

14 The next union meeting I attended was on Tuesday, 1/28/15, around 12:57 a.m. at the Denny's
15 restaurant located on I-17 and Thomas Road in Phoenix. I brought some employees to this meeting.
16 Present for the union representatives Eric Anderson only. I watched all these employees sign cards. I
17 have provided the names to the Board Agent.

18 I cannot recall if I attended union meetings from 1/29/15 to 2/24/15, or not.

19 Then on 1/29/15, the employer held a mandatory town hall meeting for the night shift employees
20 held at auditorium 1 and 2. About 100 employees were present. This meeting started around 4:44 p.m.
21 Present for management were Mark Engdahl, the Vice-President of Operations Food Service, and other
22 management team members who I cannot exactly recall. Present for employee were myself, Israel
23 Ortego, Bobby Ruelas, Taylor Blakesley, and others whose names I cannot recall. Engdahl conducted

1 the meeting and began with a speech. Engdahl in summary told us he used to be in a union and that he
2 had been out on strike and that employees could be out of a job for a certain period of time while
3 negotiations were taking place. He told us that everything goes back to the table, that our pay and
4 benefits were now all negotiable. He said we can make our own choices and we can do our own
5 research. I cannot recall him using the word Union or not. Then he played an anti-union video showing
6 union organizers waiting out in the parking lot for employees, hanging out in the break room and
7 making house calls, and generally harassing people. This video lasted about 25 minutes. After the video
8 Engdahl spoke again saying how the union just wanted our money. He said employees could come in
9 and talk to him anytime to discuss any issues they had. He then opened the floor for any question
10 answer session. Some employees asked questions, but I cannot recall what they asked or what Engdahl
11 answered.

12 After this meeting some of us employees talked in the break room about what Engdahl said
13 during this town hall meeting, as by his words we could tell that management had gotten wind of our
14 organizing campaign, and we discussed how it looked like management was scared and the reason why
15 they felt the need to start playing the anti-union video. Since my hire in 2009, the employer has not
16 played any anti-union videos at its town hall meetings, until the meeting the employer held on 1/29/15.

17 On 2/7/15, I attended another union meeting held at the union hall at 2:00 p.m. I did not bring
18 anyone to this meeting. I have given the names of attendees to the Board Agent.

19 On 2/24/15, the employer, by Ivan Vaivao, the Warehouse Operations Manager, held a
20 communications meeting with employees. This meeting was mandatory and held 30 minutes prior to the
21 start of our shift and held in the upstairs conference room. Present for management were Vaivao and
22 Brian Nicklen, the Receiving Supervisor. Present for employees were myself, Mike Boaz, Bob
23 Washman, James Lee, Willie Tang, Manuel Tostado, Nil Vose, and Ken Sandrick, all employees were

1 receivers except for me. Vaivao, in summary said that we had the right to unionize but we also had the
2 right not to be union. He said there are 24 right-to-work States and 24 Unionizing States. He told us
3 that the employer already had a good idea of who the organizers were. He told us that someone
4 approached a Meat supervisor and told the Meat Supervisor who the organizers were. Vaivao, then
5 talked about his first cousin who worked for Safeway and Safeway is union and how the employees are
6 trying to get the union out and are having trouble doing that. I cannot recall all that he said.

7 On Friday, 3/6/15, around 2:30 a.m. at work, I was checking out of work with Cory Pedroza, the
8 Shipping Supervisor. I informed him I was trying to go home as the work was done and other forklifters
9 were staying until all routes were closed. He told me to keep working even though the work day was
10 finished. I told him the others are staying until flush (when all routes are closed), and that I was not
11 trying to stay any longer as there was not enough work. (I already had 50 hours of work in that week) He
12 then said okay and let me go home. Pedroza had never tried to make me stay and work longer than my
13 work day before, or when there was no work for me to do. I do not know if he knew I was part of the
14 union organizing campaign or not.

15 Then on 3/8/15, at 4:00 p.m., I was at work, and was told by a dock captain, Steven Garcia to go
16 see Ivan Vaivao in the command center office. That is where Jeff Vanderwalker's desk is located. I went
17 to the command center and found Vaivao and Vanderwalker both present. Vaivao told me that he had
18 received an e-mail from Cory, the Shipping supervisor, saying that I was trying not to do work and
19 accused me of trying to save the work (let it build up) so we had something to do through Spring Break,
20 starting Sunday. In summary, I told Vaivao that was not true, and that there wasn't a lot of work left. I
21 told him two fork lifters were already staying to finish the work so that I wasn't needed. I had never
22 been called in before and accused of trying to not do the work. Vaivao said he was just trying to get
23 clarification on this and get the stories straight. I told him to call Cory in and let's have a meeting with

1 us all with Cory here. Jeff said Cory would be back on the 10th. Vaivao said we would meet again on
2 this tomorrow. This meeting was never held. I felt like the employer was calling me in for these
3 meetings just to harass me especially after Vaivao told us employees in the 2/24/15 meeting that the
4 employer knew who the organizers were.

5 Then on 3/26/15, at 5:30 p.m. Armando Gutierrez, the Day Shipping Manager, approached me in
6 aisle, Aisle 20, telling me that Vaivao wanted to see me for a meeting in the upstairs training room. In
7 the training room I found Vaivao and some new Human Resource temporary employee were present.
8 Present for employees were myself, Gus Alvarez(picker), Eric Diaz(runner) and two others whose
9 names I cannot recall but I knew one was a thrower. Vaivao, in summary, started the meeting with what
10 we could expect the employer to do for the summer season, which is typically a slow season and our
11 hours drop off about 8-10 hours a week. He reminded us that last year they had to lay off 35 employees
12 and that the employer was able to place 18 of them in other jobs, not making as much money, but at
13 least they were not out on the street. He said this summer the employer was not going to have layoffs
14 and not merge shifts like last year, as that was big beef with everyone last year. He told us this was not a
15 town hall this is not a round table this was about the union and they were continuing with their union
16 prevention meetings. He said that people had come up to him and told him that they had been
17 approached and asked to sign union cards as employees were still out there organizing. He said these
18 people were coming to him upset and complaining about the organizers harassing them on the floor. He
19 said at least three times associates had come to him and asked him to make them stop, stop approaching
20 them. Vaivao said we employees had the right to unionize in the building and that now that they knew
21 who the organizers were they knew these guys had an agenda, a personal agenda against Shamrock. He
22 said that these organizers cannot approach associates on Shamrock time, once they clocked in, they were
23 on Shamrock time and couldn't even say to someone in passing hey, I missed you at the meeting last

1 night. He said, they couldn't do that. They had to do it on break, lunch or offsite, not on Shamrock time.
2 Vaivao also said that he knew that these guys had a meeting off-property a few weeks ago, and he knew
3 who attended these meetings, because the next day people came back and told him about the meeting
4 and who was there. Vaivao said also that he was not for or against a union, just wanted us to do our
5 research and not listen to the lies. He said he would be vigilant and tell us the truth and not let the lies
6 these organizers were giving us go unchallenged. He said he was there to dispute their propaganda. He
7 said some employees came to him worried they would lose their jobs if they didn't sign a union card. He
8 said that was not true. He said the organizers were telling employees if the union came in their financial
9 situation would be affected, and that these employees were scared by being told that. He said that was
10 not true and that if the organizers were telling them things about their financial situation and they felt
11 harassed to raise their hand and tell him or go to HR and let HR handle it as harassment could be
12 disciplined. He said something about us not being insubordinate or disrespectful and just doing our jobs.
13 Vaivao then played an anti-union video. After the video, Diaz then spoke up and in summary
14 complained that people are upset with the employer as the employer asks us employees for feedback and
15 employees give it but the employer never uses the feedback; the employer asks for our opinions but the
16 employer had no obligation to use it. Vaivao and the HR guy both spoke said that HR is here, HR is
17 here and the doors are always open. Vaivao and the HR guy did not promise to fix any of our issues.
18 This meeting lasted 42 minutes.

19 Then on 4/21/15, Vaivao called a forklifter's meeting at 10:30 p.m. up front at will-call. Present
20 for management were Jeff Vanderwalker, Dave Garcia, Frankie Valenzula, whose title is Picker
21 Supervisor, Duane Thomas, third-shift forklift supervisor. Present for employees were second and third
22 shift employees, including myself, Jaime Frias, Derek Hall, Gilbert Jaquez, Santo Loiaza, and about 10-
23 12 other employees whose names I cannot recall. Vaivao said the topic was the rumors that a loader was

1 stealing and forklifters getting into altercations over zones. (the employer changed the number of tasks
2 per hour from 22 to 28 and added more forklift drivers so it is harder for forklifters to achieve their 28
3 tasks without going into someone else assigned zones, which gets the forklift driver assigned to the zone
4 upset. Yet supervisors give us permission to go into other zones to get the work done). In summary he
5 told us he walked out a loader for stealing and told us the employer was one of the highest paying
6 employer's in the Phoenix area and other employees who left have been calling him to get their jobs
7 back, so we needed to get along and be happy. I heard from other forklift drivers that around 4/16/15,
8 third shift employees Joel Rodriguez and Santos Loiaza were taking each other's put-aways and were
9 arguing over that. I heard from other employees that Rodriguez tried to take Loiaza's put-aways and
10 Loiaza tried to drive around Rodriguez, almost hitting an employee. I did not hear that any physical
11 violence occurred. I do not know how these other employees knew this information.

12 With regard to the next mandatory meeting the employer conducted on 3/31/15, Vaivao, called
13 this meeting the employer's profit-sharing meeting held in the auditorium 1 and 2. I attended this
14 meeting which started at 2:00 p.m. Present for management were Mark Engdahl, Dave Garcia, and
15 others in management who I cannot recall. Present for employees were front office employees and
16 second shift employees, including myself, Jaime Frias, David Castaneda, Gene Shortridge and about 100
17 other employees Engdahl conducted the meeting. Engdahl showed us a video of Kent McClelland
18 speaking. McClelland thanked us all for our hard work and talked about the profitability of the company.
19 There was no discussion about the union campaign at this meeting. No union video was shown to
20 employees. I cannot recall if there was a question answer session at the end. This meeting lasted about
21 an hour.

22 Then on 5/1/15, at 7:00 p.m. I parked my forklift to go into the office there to check my
23 productivity. There are windows in the office that let me see out to where my forklift was parked. I

1 watched as David Garcia, the Forklift manager, leaning over into my forklift and rifled through my
2 clipboard, which I own, and keep in my forklift so that I may to take notes of what happens with picks,
3 to keep track of my hours worked, show my schedule of work and where I keep print out of my pay
4 sheet. I have never seen any supervisor go through my clipboard before. I went outside the office and
5 confronted Garcia and asked him what he was looking for. He said he was looking at the schedule. He
6 then walked away. After Garcia left I went into the break room and told the employees sitting there
7 what had happened with Garcia going through my clip board. I have provided the names of theses
8 employees to the Board Agent. I told them I just caught David going though my stuff. These employees
9 asked if I confronted him or not and I told them that I did. They asked me what happened, and I told
10 them David said he was just looking at the schedule and walked away.

11 Then later that day of 5/1/15, around midnight, in aisle 25 Garcia asked me what time I was
12 leaving. No one else was present, but there is an employer camera pointed in that direction. Before
13 Garcia drove away, I asked him to be straight up with me and asked him why he was going through my
14 stuff. Garcia, said, dude, I was looking for union cards. I asked him why. He said that he got a call from
15 Transportation (he did not say who), saying I was putting up memos and gave a card to the
16 transportation clerk in the south end break room. I think Garcia was referencing a memo I had seen
17 earlier that same day. This memo was posted in the men's restroom on the back of a stall and showed a
18 photo of Jerry Kropman, saying Javier Jerry Kropman lies to associates. I saw this memo in the men's
19 bathroom, but did not get close to see it well. Also I did not give a card to anyone in the south end
20 breakroom, nor had I handed any union card to any transportation clerk, at any time, so I had no idea
21 where the employer was getting its basis for such an accusation. I told Garcia that was not true that I
22 never gave a card to the transportation clerk. He said he was shocked that it was me. He then said he
23 has been on both sides of the fence and that we employees didn't need a third party. He said his door

1 was always open. I said how many times have we employees come to management with our problems
2 and they never get solved. He said things took time, and that not everything will get fixed right away. I
3 said I had been here six years and the employer only fixed the things they wanted to fix. He said again,
4 things take time. Garcia did not say who in Transportation had called him and accused me of giving a
5 union card to the transportation clerk.

6 Then on 5/5/15, at 2:30 p.m. while I was at work in aisle 20, supervisor Gomez, the day
7 receiving supervisor, came up to me on a pallet jack and told me to go see Vaivao upstairs in his office.
8 I arrived at Vaivao's office he told me let's go see Mark (Engdahl). We then went to Engdahl's office.
9 At Engdahl's office Engdahl was on the phone when I entered and then hung up. He then extended his
10 hand to me saying Mario he had never been properly introduced to me and introduced himself. Vaivao
11 also sat down in the office. Engdahl told me that he wanted to talk to me today because there had been
12 some problems coming off the floor and that he was doing this as a heads up to me and wanting me to
13 take note and stay out of trouble. He just wanted me to be aware of that. He said that the words that
14 have come off the floor is that there is some heckling going on, some insulting going on and some
15 potential slow down on certain folks who are not sharing a similar point of view. He said he wanted me
16 to be aware of that and that it had come to their attention and that the employer's position on that was
17 that it would not be tolerated. He said that I could get into some serious trouble for that. He wanted to
18 try and avoid that. He said he was speaking as generically as he could but he was sure I knew what he
19 was talking about. I said yeah. I took Engdahl's words to me to be a warning to me, that if I didn't stop
20 organizing for the union or talking to employees about the union then I was going to be fired. He said
21 he was just trying to avoid problems. He said he was trying to talk as nicely as he could about this and
22 at least get the message across. I said yeah. He said that that was mainly what he wanted to talk to me
23 about today. He said he would be glad to answer any questions that I had, or talk about anything, at

1 least within reason, as he was limited in certain things he could and could not do, but we could certainly
2 chat. I told him that I was just doing what he told me to do in the first town hall meeting, which was to
3 do my research. I told him that there are things that the employer told us some of things they told us and
4 sometimes it was not all the points and rules, but not all of them, and I was just doing a little research. I
5 told him I may express my opinion but that I could not make up someone else's mind. I told him I just
6 give my opinion. In summary Engdahl emphasized again that he would try to answer any questions that
7 I had and repeated that again and again. I told him again that was just doing what he suggested. He said
8 that was fine. This meeting lasted about 15 minutes. I went back to my work area and told other
9 employees what Engdahl had said to me and told them that Engdahl had warned me not to talk to
10 employees about the union or I could get into serious trouble. I told these employees that I had to take a
11 backseat now in the campaign because the employer was ready to walk me out (discharge me). Since
12 that time I have stopped talking to employees at work about the union.

13 Then later that same day on 5/5/15, around 3:00 p.m., about 30 minutes after my meeting with
14 Engdahl ended, I was in the front of aisle 15 when Dave Garcia drove up and asked me if I had my
15 meeting with Ivan. I said yes and with Mark. He said see dude, it's not worth all the other bullshit. He
16 gave me my paysheet and drove away.

17 Since around the beginning of February 2015, more supervisors have been coming onto the
18 warehouse floor, passing through to asking us employees how we are doing. Prior to February 2015,
19 supervisors only came on the floor rarely, maybe around once or twice a month, unless there was a
20 problem to be addressed.

21 With regard to the employer's solicitation policy, we employees are not allowed to sell anything
22 at work but the employer sells us employees hot dogs and hamburger in the front parking lot to help
23 fund the employee relief fund. The employee also sells us employees ~~outdated~~ candy at the will call area
MC

1 to help fund the employee relief fund. I know that the employer also employees are allowed to fund-
2 raise for kids sports as I know of an employee who during break time,in the break room and at lunch
3 time and before and after work, inside the building, solicited employees for funds for his son's
4 basketball team. This employee was not covert about it. I also know about another employee who
5 brings a catalog of cookies to order for his kid's school fund raiser, to work, and keeps the catalog and
6 order form on his clipboard, and when he goes on break and in the break room takes orders from
7 employees. I have provided the names of these employees to the Board Agent.

8 I also know that the employer, by a supervisor whom I do not know, solicited employees on
9 Superbowl Sunday, to enter a pool for the football game. I heard about this pool from other employees.

10 With regard to the employer's confidentiality policy, I know that sometime around January or
11 February 2015, a more exact date I cannot recall, I heard from other employees that the picker
12 employees and loader employees were told by management that temporary employees were being hired
13 and that the picker employees were not tell the temporary employees how much they were being paid,
14 because the temporary employees were not being paid as much. I was never directly told this, and only
15 heard it from other employees whose names I have provided to the Board Agent. I don't recall if I
16 signed a confidentiality agreement when I was hired or not. I know the employer has a confidentiality
17 policy in the Associate Handbook, but I don't know what it says.

18 With regard to the employer interrogating employees, I know that on or around 5/7/15, that
19 supervisor Duane Thomas approached Thomas Richardson, a forklifter, in Richardson in Richardson's
20 work area and asked Richardson what side of the fence he was on, was he for the union or against it. I
21 know this happened because I spoke with Richardson after work in the parking lot and he told me this.
22 Richardson did not tell me what he responded. I know that Thomas also approached David Trujillo in
23 Trujillo's work area on a date I cannot recall, and asked Trujillo if he was for the union or against it.

1 Trujillo told Thomas no but that he was about to be for it because one of the other supervisors kept
2 messing with him. I know about this incident because Trujillo told me about it. I know that Thomas
3 approached Gene Shortridge, either around 5/7/15 or 5/14/15, in Shortridge's work area and asked him
4 what he thought about the union and if he was for it or against it. Shortridge told Thomas that he was
5 going to go with the majority. I know this incident because Shortridge told me about it.

6 With regard to employees the Employer has discharged, I heard from other employees that
7 Thomas Wallace was discharged on 4/6/15, for asking a question in a town hall meeting with upper
8 management, during the first shift profit sharing meeting. Also the employer discharged Robert Perez
9 on 5/13/15, a picker, for allegedly violating the employer's punctuality policy. Also I heard that around
10 5/13/15 or 5/14/15, the employer discharged employee Snoop, whose real name I do not know. I heard
11 he was discharged for insubordination. Another employee Victor Martinez, a hospital runner, I heard
12 was also discharged for attendance on or around 5/13/15 or 5/14/15. I have provided the names of the
13 employees who told me about the above discharges to the Board Agent. With the higher incidents of
14 discharges it appears to us employees that the employer is more strictly enforcing its policies.

15 With regard to the employer watching employees more closely, I know my supervisor David
16 Garcia is driving around more often in the aisle where I work, and if he sees me talking to anyone he
17 gestures for us both to spread apart with his hands which Garcia has done in the past, but is doing much
18 more often. For example Garcia back in October 2014, I may have seen Garcia in my work area once or
19 twice a day. Now, I see Garcia about five or six times a day in my work area. Then around 5/1/15, I was
20 talking with a co-worker in the aisle and return supervisor Miguel Randall, drove past the aisle, then put
21 his tugger in reverse and came back to the area where the co-worker and I were talking and asked us if
22 we had seen his employees. This was unusual, as I didn't even know who this supervisor's employees
23 were. Return employees (employees who drive tuggers also and re-stock returned items all over the

1 warehouse) may enter my work area maybe once or twice a day, but I rarely talk to them. I tell other
2 employees to beware that Dave is driving around again.


3 With regard to the employer's use of electronic messaging to employees the employer posts
4 flyers by the time clocks, near lunch rooms and all over the warehouse. The employer has posted its
5 anti-union flyers in the break room, by the time clock, behind locked glass in its bulletin boards. The
6 employer has about 10 bulletin boards; three up front, about five in the upstairs break room, and a
7 couple in the shipping break room; none in the south end break room as the employer just tapes flyers to
8 the walls there.

9 With regard to what languages employees speak and read at work, there are some employees
10 who prefer to speak and read Spanish, and during employer meetings sit by bilingual employees to have
11 them interpret for them. We also have Polish employees who speak Polish when they are together.

12 With regard to the employer's conduct affecting the organizing campaign, not one employee has
13 asked for the return of their union card they signed. The number of employees showing up at union
14 meetings has been decreasing. We had a meeting on 4/25/15 and about 20 employees showed up, but the
15 majority of attendees had already signed cards. I cannot recall if there was a sign-in sheet, but I think
16 there was a sheet. I know that maybe two employees signed cards at that meeting. At work employees
17 are coming up to me and telling me the employer is hiring more temp employees and is firing more
18 people than before and employees are fearful that the employer will fire them and replace them with the
19 temp employees. I have never heard of the employer walking out three employees in a two day period
20 before.


I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 15 pages, including this page; I fully understand its contents and I certify under penalty of perjury that the foregoing is true and correct.



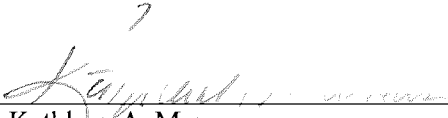
Mario Lerma signature Date 5-18-15

I have received a copy of my affidavit.

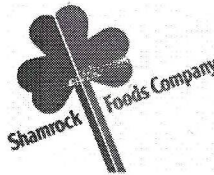


Mario Lerma signature Date 5-19-15

Subscribed and Sworn to before me at
Phoenix, Arizona
This 19th day of May 2015.



Kathleen A. Mangas
Board Agent
National Labor Relations Board



May 8, 2015

To All Associates:

It has come to my attention that some associates have recently been subjected to threatening, violent, or unlawfully coercive behavior by other associates. This is a very serious matter and one that I take personally.

Let me be clear: such behavior is not consistent with the Shamrock Foods Company culture and values that are central to us. Shamrock has been in business since 1922, and has never tolerated associates behaving towards each other in a manner which is violent, threatening, or unlawfully coercive. Shamrock Foods Company has always celebrated and encouraged the diversity of its associates and will continue to do so. Associates should not be physically afraid of coming to work. We will not allow associates to behave in a manner which violates the law through threats of violence, or unlawful bullying. Simply put, this type of behavior is unacceptable and I will make every effort to stop it at our workplace.

To that end, if you have been the victim of such behavior, in any way, shape, or form, however minor, please promptly report it. Shamrock will fairly and thoroughly investigate all allegations. If the complaint has merit, Shamrock will take appropriate action against anyone threatening associates and refer the matter to law enforcement for prosecution to the fullest extent of the law if that is the right course of action. Each associate is expected to perform their work in a cooperative manner with management/supervision, fellow associates, customers and vendors.

I appreciate your hard work as we continue to grow our business locally and into different geographies. I tell everyone that we have the best associates and I am proud of your strong work ethic and dedication to this Company, day in and day out. It is my hope that we can continue to work together to provide our customers with the superior service that they have come to expect from Shamrock Foods Company.

If you have any questions about these issues, feel free to come to my office to discuss it or review it with your supervisor at any time.

Kent McClelland

Shamrock Foods and Shamrock Farms Dairy Division

Supplemental Confidential Witness Affidavit

I, Steven Phipps, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

All my contact information I provided in my initial affidavit is still current.

1 This supplemental affidavit is given to provide evidence with regard to the Employer's
2 continuing conduct.

3 Around 5/22/15, the employer posted more anti-union flyers behind the glass of its bulletin
4 boards in the warehouse, of which there are now about five or six Employer bulletin boards located
5 throughout the warehouse. The employer installed new bulletin boards in all of its break rooms about 30
6 days ago, a more exact date I cannot recall. One of the flyers behind the glass bulletin board stated the
7 following:

8 **"SO YOU WERE FOOLED INTO SIGNING A UNION CARD AND NOW WANT IT**
9 **BACK.** We have heard that some associates say they were fooled, pressured or coerced into
10 sign a union card and now want it back. Here's the story: Asking the union to give you a card
11 back is usually pointless. They do not respect you enough to listen to you. Just try it and see
12 what happens. Since they won't respect you now, imagine what it would be like after they had
13 your money deducted right out of your paycheck for dues. But all is not lost. Here's what to do:
14 Tell other associates NOT to sign cards. Remind other associates that signing a card does NOT
15 mean there is a union. It only provides for an election. If you signed a card, you do NOT have to
16 vote the union in. During a secret ballot election, you would vote "NO". **Don't fool around**
17 **with your paycheck, your family's future, and your job. Say "NO" to this union."**

18
19 A second flyer stated the following:

20
21 **"FACT OR FICTION???**
22 **Future of 401(k)**

PRIVACY ACT STATEMENT

Page 1 of 9  Initials

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

1 Shamrock has a great 401(k) plan. It helps employees prepare for their retirement someday. Thas
2 is one of the way we look out for our associates. Now, those that want to bring in a union are
3 placing the 401(k) plan at serious **risk**. Here is why:

4 - unions like the BCTGM prefer that we move retirement money to their BCTGM
5 pension fund

6 - That Union Pension Fund is in *critical status* and will so be through 2024.

7 - By a union proposing this unstable Pension Fund, it is likely that 401(k) contributions
8 will cease.

9 - in the give-and-take of union bargaining, employees have to give something up. In this
10 circumstance it could be your 401(k).

11
12 Be Smart. **Protect** your 401(k). **Protect** your Families. **Protect** your retirement money. Say **NO**
13 to union organizing. **KNOW THE FACTS**"

14
15 I have provided a copy of these flyers to the Board Agent.

16 On 5/24/15, around 2:05 p.m., I began handbilling in the employer's warehouse PKMS break
17 room, also known as the warehouse eight break room, located at 2450 N. 29th Avenue, Phoenix, AZ
18 85009. I was on lunch break, which lasts 30 minutes, and was the only one handbilling. I started
19 handbilling in the outside seating area of the break room where about five employees were sitting
20 handing each employee a handbill and told them whether they were pro-union or anti-union that on the
21 handbills were their rights under the National Labor Relations Act and that they needed to know them. I
22 then went inside the break room where about 20-25 employees were present. Floor Captain Art Manning
23 was present. No supervisors were present. Present for employees were Niles Vose, Julian Magdaleno,
24 and others whose names I cannot recall. I gave a handbill to all employees present and repeated what I
25 had said to the employee seated outside. This handbill had two-sides printed, with one side listing about
26 35 things managers can and cannot do, and the other side asking employees to report to the union any
27 unlawful conduct the employer engaged in. I said if they intended to take the handbill to management to
28 at least read it first to know their rights. I did not leave any handbills on the counters. Other literature
29 the employer displayed on those counters were blood drive standing plaques, and a brochure about
30 living healthy. I don't know who leaves those items there, but the only people who ever talk to

1 employees about the blood drive or living healthy are the employees who work in the benefits
2 department. Those standing plaques and brochures are always present in the break room counters.

3 I left that break room and went to the south end break room to handbill. Present in that break
4 room were employees Dave Casteneda and Mike Johnson. I handed them each a handbill and told them
5 the same message I gave to employees in the first break room. No supervisors were present. No one
6 had any questions for me. I then left three handbills on the counter. I cannot recall if the standing blood
7 drive plaque and healthy living brochures were in that break room or not.

8 I left the south end break room and handed some of the handbills I had to employee Mario Lerma
9 to hand out in the various break rooms during his lunch break which was scheduled to start at 8:00 or
10 9:00 p.m. that night.

11 I then went to the upstairs break room and handed out five or six handbills to employees present
12 in the break room, including Dave Silva and others whose names I cannot recall. Again I said the same
13 thing to these employees as I said the other employees about knowing their rights. No supervisors were
14 present. I left four handbills on the counter where the employer has displayed the blood drive plaques
15 and healthy living brochures.

16 I left the south end break room and went to the high rise break room, and had one handbill left.
17 There were about 10 employees in the break room and no supervisors. Present for the employees were
18 Manual Martinez, Mario Morales, Jared Kirchman, and other employees whose names I cannot recall. I
19 told these employees the same thing I had said to the other employees in the break rooms. I also told
20 them I had one flyer left with me that told employees their rights under the National Labor Relations
21 Act. One employee raised his hand and I gave him the flyer.

22 I left that break room and went to truck park area and parked my forklift and then went to the
23 locker room to change out of my freezer gear and then left the building at 2:30 p.m. I then sent Lerma a

1 text and told him how the handbilling went. I told him it went well and told him what I had said to the
2 employees as I handed them flyers. Lerma sent me a text back and told me that another employee
3 whose name I have given to the Board Agent, saw supervisor Armando Gutierrez pick up the handbills I
4 had left in the break room. He did not say which break room. I then text this employee and said I heard
5 he had seen Gutierrez take flyers from the break room and was that true. This employee sent a text back
6 saying yes, it was true.

7 Then on 5/25/15, I was at work and during my lunch break at 11:00 a.m., I went to the upstairs
8 break room, ate my lunch and then handbilled the 20 or so employees in the break room. Present for the
9 employees were Benny Wabbenting, Dave Silva, Carl Dejarle, Paul Wright, Roy Aja, and others whose
10 names I cannot recall. Supervisor John Cole, the Maintenance Manager was present, and I handed him a
11 handbill. I told these employees the same thing I told the employees on 5/24/15 regarding their rights.
12 Cole got up and left the room, leaving half of his unfinished lunch on the table, taking the handbill with
13 him. I continued to pass out handbills and after handing one to each employee in the room and was
14 preparing to leave when four employees asked me to come over to their table to chat with them at an
15 isolated table located in the northeast corner the farthest table from any of the two entrances to the break
16 room. I have provided the names of these employees to the Board Agent. I asked these employees if
17 they had any questions about the flyer or the Act. They asked me about signing a union card and if
18 signing the card made them a union member. I said no. It simply meant that they wanted to have a vote
19 on the union and that they wanted to have the union represent them for collective bargaining purposes if
20 the vote ended up with the union having a majority. Then they asked me about dues and when they had
21 to pay dues. About that time, supervisor Joe Remblance, the Safety Manager, starting yelling from
22 somewhere behind me, saying loudly "how's it going guys; how's your lunch" directing his question to
23 the employees sitting at the table where I was talking to them. None of these employees are in his chain

1 of command. I looked around and saw Remblance standing about five feet away. He had yelled so
2 loudly that no one could hear what I was saying, completely interrupting what I was saying to these
3 employees and injecting himself into our private conversation about union matters. I did not see him
4 enter and do not know how long he stood nearby as I was answering the questions these employees
5 posed about the union. Not one employee answered Remblance. I have never before heard Remblance
6 asking employees in a lunch room on break, how they were doing or how their lunch was. Remblance
7 then went to the refrigerator and grabbed a bottle of water, coming to within about four feet from the
8 table. I asked him what he was doing. Remblance said he was just asking them how their lunch was and
9 how they were doing. I said no, he was not. He said yes, he was. I said what he [Remblance] just did
10 was unlawful, according to the Act. I told Remblance that he just needed to shut up and go away. At
11 that point Remblance turned around and walked out of the break room. I then turned to the employees
12 and told them that what he [Remblance] was doing was called cooling (chilling) and it was meant to be
13 intimidating so that they wouldn't listen to what I was saying about the union. After that I answered a
14 few more questions the employees had about the union and turned around to leave the break room. I
15 then saw that another employee had entered the room and I handed him a handbill. I then noticed that
16 Karen Garzon, whose title is the Sanitation Supervisor, picked up two of the handbills I had handed out
17 to three employees sitting at a table together, earlier. Garzon picked the handbills up off the table, from
18 between the arms of these employees, who were either reading the handbills or looking down at them. I
19 have provided the name of one of these employees to the Board Agent. I heard Garzon say to these
20 employees that they didn't need them. I went over to their table and told the employees that what
21 Garzon was doing was a violation of the National Labor Relations Act, and that they didn't have to let
22 her take them. Garzon looked at me and said, oh, then asked the employees "you don't want these do
23 you?" No one answered her, but the two employees she had taken the handbills from shook their heads.

1 Both of these employees are Hispanic and I don't think either of them spoke any English or understood
2 what was going on, but I could see their eyes get big when I told them they didn't have to let Garzon do
3 that. The employees didn't say a word or move and I could tell I had placed them in an awkward
4 position and left the room.

5 I went back to work and on my 1:00 p.m. break, I went to the south end break room and passed
6 out handbills to everyone present. There were about three employees present and no supervisors were
7 present. A Floor Captain, Gil Jordan, was present. I gave these employees and Floor Captain the same
8 speech I had given to other employees about needing to know their rights under the Act. I asked one of
9 the employees if they wanted a copy to give to their manager, as I knew that this employee was anti-
10 union and this employee said yes, so I gave this employee a second copy. I then left the room.

11 Then at 4:44 p.m. I received a text from Lerma who asked me if I knew that John Cole, the
12 Maintenance Manager, was going around and picking up all the handbills [I think were left by the
13 employees I had given them to] from off the tables in the upstairs break room. I said no. Lerma told me
14 that somebody else saw Cole do it, and that employee did not want his name used.

15 Then on 5/26/15, I was at work and an employee whose name I have given to the Board Agent,
16 came up to me and told me he saw John Cole, the Maintenance manager, on 5/25/15, picking up my
17 handbills in the upstairs break room, saying that the flyers were littering the break room and that Cole
18 was going to get rid of them. I told this employee that was a violation of the Act and thanked him for
19 letting me know. I have never seen any supervisor pick up trash left on tables before. I have come into
20 break rooms in the past where there was trash on the tables, such as used napkins, soda cans, water
21 bottles, paper plates with food in them, salt spilled on the table, empty sugar packets on the table. The
22 sanitation employees are usually the ones to clear tables and clean them. So it was unusual to hear that a
23 supervisor was picking up trash off the tables, labeling the handbills as trash.

1 Then around 5/26/15, I spoke to one of the employees who had Garzon take away their handbill
2 the day before, whose name I gave to the Board Agent, who was mopping in the dock area. I told this
3 employees that I hoped I didn't get the employee in trouble with Garzon the other day. This employee
4 said no. I then asked the employee if the employee wanted another copy of the handbill as I knew
5 Garzon had taken the handbill from the employee on 5/25/15. This employee said they didn't need
6 another copy. Yet this employee had taken the handbill from me before Garzon began collecting the
7 handbills in the break room. We both then went back to work.

8 Also on 5/26/15, I got a text from Lerma around 7:52 p.m., who was scheduled to pass out
9 around 50 handbills in break rooms again on his break time. I asked him how the handbilling went. He
10 sent me a text back and told me he thought that supervisor Dave Garcia was going into the break room
11 after Lerma finished eating. He did not say he saw Garcia going into the break room. Lerma then sent
12 me another text shortly after that and said he just came out of the bathroom and that Garcia was in the
13 aisle next to where he was working. I sent him a text back and asked if Garcia was watching him, and
14 that it was unlawful to surveil Lerma and his union activities or give the appearance he was surveilling
15 Lerma. I text Lerma that he could walk up to him [Garcia] and ask him if he aware that surveilling of
16 giving the appearance of it is a violation of the Labor Relations Act. See what he says, don't argue. I
17 told him I thought the managers were informed of the 10(j) letter that day as it was real quiet. By real
18 quiet I meant that there were hardly any supervisors in the warehouse, where the week before there were
19 supervisors constantly walking back and forth down on the floor of the warehouse going to other places
20 in the building, then coming back, talking to employees a lot and to each other. A week ago, I estimate
21 that I saw about 6-12 supervisors on the warehouse floor a day, ranking from supervisor up to managers,
22 including Kropman, Gutierrez, and Vaivao. But then on 5/25/15, all the supervisor/manager traffic on
23 the floor just stopped.

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6 the floor just stopped.

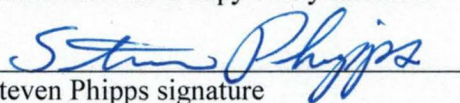
7 With regard to the organizing campaign, the union has not held any more union organizing
8 meetings since 5/19/15. It is clear though, that the union campaign has been slowed down significantly
9 by the employer's conduct, especially after the employer discharged Wallace on 4/6/15. After Wallace
10 was discharged, the Union got only eight union cards signed. Then in May 2015, after the employer
11 discharged Robert Perez, Victor Martinez, and Dajaune Scott, the union got only four union cards signed
12 for the whole month. Prior to Wallace's termination and the other employees' terminations the union
13 was getting about 24 cards signed during a 30 day period.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 9 pages, including this page; I fully understand its contents and I certify under penalty of perjury that the foregoing is true and correct.

 5/28/15
Steven Phipps signature Date

I have received a copy of my affidavit.

 5/28/15
Steven Phipps signature Date

Subscribed and Sworn to before me at
Phoenix, Arizona
this 28th day of May 2015

A handwritten signature in blue ink, appearing to read "Kathleen A. Mangas", is written over a horizontal line.

Kathleen A. Mangas
Board Agent
National Labor Relations Board

CERTIFICATE OF SERVICE

All Case Participants are CM/ECF Participants

I hereby certify that on April 4, 2016, I electronically filed the foregoing Supplemental Excerpts of Record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Amy L. Cocuzza

Amy L. Cocuzza